

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>2</p> <p>3 In the Matter of:)</p> <p>4) File No. C-08400-A</p> <p>5 CATALYST HEDGED FUTURES)</p> <p>6 STRATEGY FUND)</p> <p>7</p> <p>8 WITNESS: Edward Walczak</p> <p>9 PAGES: 1 through 325</p> <p>10 PLACE: Securities and Exchange Commission</p> <p>11 175 West Jackson Boulevard,</p> <p>12 Suite 1400</p> <p>13 Chicago, Illinois</p> <p>14 DATE: Tuesday, April 3, 2018</p> <p>15</p> <p>16 The above-entitled matter came on for hearing,</p> <p>17 pursuant to notice, at 9:10 a.m.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Diversified Reporting Services, Inc.</p> <p>25 (202) 467-9200</p>	<p style="text-align: right;">Page 3</p> <p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS: EXAMINATION</p> <p>4 Edward S. Walczak 4</p> <p>5</p> <p>6 EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>7 85 Presentation 186</p> <p>8 86 Fact Sheet 184</p> <p>9 87 Presentation 196</p> <p>10 107 Subpoena 12</p> <p>11 108 Background Questionnaire 88</p> <p>12 109 Fact Sheet 112</p> <p>13 110 Proposed Approval 225</p> <p>14 111 Presentation 246</p> <p>15 112 Presentation 247</p> <p>16 113 Agreement 269</p> <p>17 120 Reconciliation 84</p> <p>18 124 Rios Agreement 293</p> <p>19 133 Prospectus 115</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 JASON SCHMIDT</p> <p>5 DAVID BENSON</p> <p>6 TERRY MORAN</p> <p>7 JEFF SHANK</p> <p>8 Securities and Exchange Commission</p> <p>9 175 W. Jackson, Suite 1450</p> <p>10 Chicago, IL 60604</p> <p>11</p> <p>12 On behalf of the Commodity Futures Trading</p> <p>13 Commission:</p> <p>14 SAM WASSERMAN</p> <p>15 MICHAEL CAZAKOFF (via telephone)</p> <p>16 Commodity Futures Trading Commission</p> <p>17 140 Broadway</p> <p>18 New York, NY 10005</p> <p>19</p> <p>20 On behalf of the Witness:</p> <p>21 ZACHARY J. ZILIAK</p> <p>22 STEVEN BYLINA</p> <p>23 Ziliak Law, LLC</p> <p>24 141 West Jackson Boulevard, Suite 4048</p> <p>25 Chicago, IL 60604</p>	<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 MR. SCHMIDT: So we're on the record</p> <p>3 April 3rd, 2018, at 9:10 a.m.</p> <p>4 Can you please raise your right hand?</p> <p>5 Whereupon,</p> <p>6 EDWARD S. WALCZAK</p> <p>7 was called as a witness and, having been first</p> <p>8 duly sworn, was examined and testified as</p> <p>9 follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. SCHMIDT:</p> <p>12 Q Okay. Can you please state and spell</p> <p>13 your full name for the record?</p> <p>14 A Edward S. Walczak, W-a-l-c-z-a-k.</p> <p>15 Q Okay. My name is Jake Schmidt. This</p> <p>16 is David Benson.</p> <p>17 MR. BENSON: Good morning.</p> <p>18 MR. SCHMIDT: Down at the end, that's</p> <p>19 Terry Moran. We are members of the staff of the</p> <p>20 enforcement division based in Chicago of the SEC,</p> <p>21 and for purposes of this proceeding, we are</p> <p>22 officers of the Commission.</p> <p>23 Another colleague, Jeff Shank, may be</p> <p>24 joining us as well later on. So if you see</p> <p>25 somebody come in, that's who it is.</p>

<p style="text-align: right;">Page 5</p> <p>1 Also present are members of the CFTC. 2 I'll let them introduce themselves. 3 MR. WASSERMAN: Sam Wasserman. I'm a 4 trial attorney with the division of enforcement 5 of the CFTC, and on the phone is my colleague, 6 Mike Cazakoff, who is an investigator with our 7 office. 8 BY MR. SCHMIDT: 9 Q Okay. This is an investigation by the 10 United States Securities and Exchange Commission 11 in the matter of Catalyst Hedged Futures Strategy 12 Fund to determine whether there have been any 13 violations of certain provisions of the federal 14 securities laws. However, the facts developed in 15 this investigation might constitute violations of 16 federal or state civil or criminal laws. 17 Prior to the opening of the record, you 18 were provided a copy of the formal order. 19 Have you had a chance to look at that? 20 A Yes, I have. 21 Q Okay. That will be out there in front 22 of you for the duration if you ever want to refer 23 to it. 24 Do you have any questions about that? 25 A I do not.</p>	<p style="text-align: right;">Page 7</p> <p>1 other than Mr. Ziliak and his colleague? 2 A Mr. Moyle. 3 Q Okay. So I'm going to read part of 4 Form 1662 that deals with counsel that represents 5 multiple parties. 6 So what it says is you may be 7 represented by counsel who also represents other 8 persons involved in the Commission's 9 investigation. This multiple representation, 10 however, presents a potential conflict of 11 interest if one client's interests are or may be 12 adverse to another's. If you are represented by 13 counsel who also represents other persons 14 involved in the investigation, the Commission 15 will assume that you and counsel have discussed 16 and resolved all issues concerning possible 17 conflicts of interest, the choice of counsel, and 18 the responsibility of that choice is yours. 19 Do you understand that? 20 A I do. 21 Q Okay. So Mr. Moyle, based on a 22 decision of the -- I guess the Ed Walczak legal 23 team has decided not to be here out of an 24 abundance of caution; is that correct? 25 MR. ZILIAK: For purposes of today,</p>
<p style="text-align: right;">Page 6</p> <p>1 Q Okay. You've also had a chance to look 2 at SEC Exhibit 1, which is the SEC Form 1662. 3 Have you had a chance to review that? 4 A I have. 5 Q And do you have any questions at this 6 point? 7 A I don't. 8 Q Okay. Are you represented by counsel? 9 A I am. 10 MR. SCHMIDT: Okay. Could counsel 11 please identify himself? 12 MR. ZILIAK: So my name is Zachary 13 Ziliak, and stepped out of the room for the 14 moment is my colleague, Steven Bylina. 15 MR. SCHMIDT: And you are both with the 16 same firm? 17 MR. ZILIAK: Yes. 18 MR. SCHMIDT: Okay. And you represent 19 Mr. Walczak? 20 MR. ZILIAK: We do. 21 MR. SCHMIDT: Do you represent any 22 other parties in this investigation? 23 MR. ZILIAK: No, we do not. 24 BY MR. SCHMIDT: 25 Q Okay. Do you have any other counsel</p>	<p style="text-align: right;">Page 8</p> <p>1 that is correct. 2 MR. SCHMIDT: He still remains counsel 3 to Mr. Walczak? 4 MR. ZILIAK: Yes, he does. 5 MR. BENSON: Mr. Walczak, what is your 6 understanding of the scope of Mr. Moyle's 7 representation as relates to you? 8 THE WITNESS: Only that he represents 9 me in this matter as does Mr. Ziliak, but he also 10 represents Catalyst. 11 MR. BENSON: Okay. Do you have an 12 understanding as to whether there's a difference 13 in the scope of representation as to you between 14 Mr. Ziliak and Mr. Moyle, or do they have 15 essentially concurrent representation of you? 16 THE WITNESS: I have no understanding 17 of that, no. 18 MR. BENSON: All right. Okay. Thank 19 you. 20 BY MR. SCHMIDT: 21 Q In addition to Catalyst, do you know if 22 Mr. Moyle represents other individual people in 23 this investigation? 24 A I don't know. 25 Q You don't know one way or the other?</p>

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1 A I don't.

2 MR. SCHMIDT: Okay. So we'll note for
3 the record that Steve is back in the room. Okay.

4 BY MR. SCHMIDT:

5 Q A couple of round rules. I think these
6 were covered the last time, but I am just going
7 to go over them.

8 So today you are under oath pursuant to
9 a subpoena issued by the SEC. So in terms of the
10 questions that David, Terry, or I, or anybody on
11 the SEC side ask you, you are obligated to
12 answer, and you have to answer truthfully. Okay?

13 A Sure.

14 Q Okay. To the extent that you don't
15 know the answer to one of our questions and
16 you're speculating, I'd ask that you let us know.
17 Okay?

18 If you don't tell me that you're
19 guessing or that's your -- you know, your
20 speculation, I'm going to assume you're basing
21 your answer on personal knowledge. Okay?

22 A All right.

23 Q Okay. If you don't hear the question
24 or don't understand it, please let me know it.
25 If I ask a question and you answer it, I'm going

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1 to assume you both heard it and understood the
2 question; is that fair?

3 A Sure.

4 Q Okay. The court reporter is creating a
5 written transcript of everything we say. So it's
6 important that we speak clearly, not overly fast.

7 If I ask a question, I ask that you
8 wait until I'm done before you start answering,
9 even if you sort of know where I'm going, just so
10 she can create a clean record. And I'll try to
11 let you finish your answer before I jump in with
12 another question. Okay?

13 A Great.

14 Q Okay. All answers should be audible
15 instead of nods or shakes of the head, and they
16 should be clear. So a yes, no, as opposed to an
17 uh-huh or uhn-uhn. Okay?

18 A Okay.

19 Q All right. I'm going to be providing
20 exhibits for you to look at. I'm going to take
21 those all back at the end. So if you are the
22 kind of person who writes on things, write on
23 something else so I don't see what you're
24 writing. Okay?

25 A Okay.

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1 Q If you want to take a break, we can
2 take a break at any time. Let me know. I'll
3 find an appropriate time to take a break. I just
4 ask, if I've asked you a question and you want to
5 take a break, just answer the question before we
6 break. Okay?

7 A Okay.

8 Q All right. None of my questions or
9 none of any of our questions are intended to get
10 you to tell us any confidential communications
11 with your attorneys. Okay?

12 A Okay.

13 Q So if you think that the answer to a
14 question would reveal any of that, let your
15 attorney know. We'll take a break. We'll decide
16 the best way to proceed, but I just want you to
17 know that that's not what we are intending to do
18 today. Okay?

19 A All right.

20 Q Can you think of any reason, sitting
21 here today, that you can't provide complete,
22 truthful, and accurate testimony?

23 A No.

24 Q Okay. Have you taken any medication or
25 anything else that might affect your memory?

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1 A No.

2 (SEC Exhibit No. 107 was
3 marked for identification.)

4 BY MR. SCHMIDT:

5 Q All right. Let me show you what's been
6 marked as SEC Exhibit 107.

7 So is this a copy of the subpoena that
8 has compelled you to appear today?

9 A It appears to be, yes.

10 Q Okay. Do you know anybody else who has
11 received a subpoena or who has otherwise
12 testified in this matter?

13 A Yes.

14 Q Who?

15 A Jerry Szilagyi, Kimberly Rios, Jeremy
16 O'Keefe, Dan Saffrin.

17 Q Okay. Anybody else?

18 A Those are the ones that have mentioned
19 to me that they were asked to testify.

20 Q Okay. So let's take Mr. Szilagyi. Did
21 he tell you before he had to testify, after he
22 had to testify, or both?

23 A Both.

24 Q Okay. Tell me about those
25 conversations.

<p style="text-align: right;">Page 13</p> <p>1 A All I recall is that he mentioned to me 2 when he was scheduled to testify. 3 Q Okay. What about the conversation 4 after he had already testified? 5 A He mentioned to me that he had 6 successfully testified and it was over. 7 Q Okay. Did he go into any substance 8 about what was asked, what he said, anything like 9 that? 10 A No. 11 Q All right. What about Ms. Rios? 12 A Same. 13 Q Okay. No substantive conversations 14 about: This is what I said; this is what we 15 should say? 16 A No, not at all. 17 Q Okay. And what about Mr. O'Keefe? 18 A The same. In fact, I don't recall him 19 even mentioning that he had completed testimony, 20 but I assume he had. 21 Q But he gave you a heads-up that he had 22 got asked to say something -- to meet with us? 23 A Yes. 24 Q And what about Mr. Saffrin? 25 A That's also the same story. He -- he</p>	<p style="text-align: right;">Page 15</p> <p>1 benefits around methods, discipline, those sorts 2 of things, but in terms of the mechanics of 3 trading -- 4 Q Yeah. 5 A -- I have done it professionally since 6 2005. 7 Q Uh-huh. 8 A I have done it personally off and on 9 since the late '80s. 10 Q Okay. 11 MR. BENSON: So if you were to speak to 12 someone at a dinner party, let's say, and they 13 said: Hey, Ed, how long have you been trading 14 options or securities, how would you respond? 15 THE WITNESS: I would say I've been 16 doing some sort of trading for more than 30 17 years. 18 MR. BENSON: Thank you. 19 BY MR. SCHMIDT: 20 Q So based on that experience, I want to 21 understand or I want to know your understanding 22 of certain terms, what they mean to you, based on 23 that experience. Okay? 24 A All right. 25 Q So can you tell me what gamma is?</p>
<p style="text-align: right;">Page 14</p> <p>1 mentioned he was scheduled to testify. I asked 2 him afterwards. 3 He's a young man. So I wanted to 4 ensure that he wasn't upset by what had occurred. 5 And he assured me everything was fine. But there 6 was no discussion of any substance. 7 Q Okay. How many years of relevant 8 trading experience do you have? 9 A Relevant means? 10 Q Well, if your -- you're currently a 11 portfolio manager, correct? 12 A Correct. 13 Q So if you're meeting somebody and you 14 want to convince them or ensure them that you 15 know what you're doing and you describe your 16 experience -- like, in your mind, what experience 17 do you have that qualifies you to be a portfolio 18 manager? That sort of relevant experience I'm 19 talking about. 20 A Sure. 21 Q So I know you were in the military. 22 A Right. 23 Q I assume, although that probably has 24 many benefits, it's not trading, right? 25 A Right. I mean, certainly it has some</p>	<p style="text-align: right;">Page 16</p> <p>1 A Gamma is the rate of change of delta. 2 Q Okay. And what is delta? 3 A Delta is the -- is a measure of how a 4 derivative price will change relative to the 5 price of the underlying on which the derivative 6 is based. 7 Q Okay. And what about theta? 8 A Theta is a measure of the time decay of 9 an options price, so how much the options price 10 will decay as time goes on, all else being equal. 11 Q Okay. And vega? 12 A Vega is a measure of the sensitivity of 13 an options price to changes in implied 14 volatility. 15 Q Okay. And you've heard of the phrase 16 "the Greeks," right? 17 A Yes. 18 Q Okay. Is that -- are those terms 19 essentially part of the Greeks? 20 A Yes. 21 Q Are there other Greeks that you're 22 aware of? 23 A There are other Greeks that I am aware 24 of. I will admit to not having a great 25 familiarity with the balance of them.</p>

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1 Q Are there other Greeks that are
2 particularly important to options trading?

3 A Not in my mind, no.

4 Q Okay. Just the four that we've
5 covered?

6 A Correct.

7 Q Okay. And are all four of those, in
8 your mind, relevant to options trading?

9 A To certain types of options trading,
10 yes.

11 Q Okay. What's a stop-loss measure?

12 A A stop-loss measure is something which
13 is designed to limit loss in some way.

14 Q Okay. And what's a --

15 MR. BENSON: Can you give us an example
16 of a stop-loss measure?

17 THE WITNESS: Stop loss, an example, in
18 securities trading, which is perhaps the most
19 relevant, would be to enter an order to sell a
20 stock if -- if its price passes through a certain
21 level.

22 BY MR. SCHMIDT:

23 Q I see. So if -- if -- okay. So if you
24 wanted your loss to stop at X, you would talk to
25 your broker or whoever, and say: You got to sell

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1 this if it hits this level because I can't lose
2 anymore?

3 A Correct. And --

4 Q Okay.

5 A -- the additional definition to that,
6 of course, as the broker would tell you, is there
7 is no guarantee that you can execute at that
8 price.

9 BY MR. BENSON:

10 Q So, for example, you could put a
11 stop-loss order at a specific price -- so let's
12 just say theoretically you had one share of
13 Amazon, and it was trading at \$165. You could
14 put in a stop-loss order at 150, and as soon as
15 it hit at 150, that sell order would become live,
16 and it might get executed at 150, but it might
17 get executed at 149 --

18 A Correct.

19 Q -- right?

20 A That's correct.

21 Q So you provided us with an example of a
22 stop-loss measure with regards to securities.

23 What would they -- are there stop-loss
24 measures with regard to options?

25 A Sure.

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1 Q Explain what you mean by that.

2 A Well, as with securities, there are any
3 number of ways that you effect the stop-loss
4 order.

5 Typically, in the options arena, the
6 same type of stop loss is not used because
7 there's less liquidity, so a much wider bid-ask
8 spread in options. And because a stop-loss order
9 is essentially an order that says, if a price is
10 hit, yours executed at the market, it's, in my
11 experience, unwise to enter a stop loss at a
12 specific price in the options market.

13 Q It's possible to enter a stop-loss
14 order in the options market at a specific price,
15 though, correct?

16 A I've never done it, but I suspect it
17 is.

18 Q Okay. So -- but you believe it is
19 unwise to enter a stop-loss order at a specific
20 price with regard to an option, right?

21 A Yes.

22 Q So can you give me an example of
23 stop-loss measures in the options market?

24 A Sure. Well -- and, again, these are
25 also relevant in securities.

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1 A stop loss can be a mechanical order
2 entered with a broker. It can be an internal
3 trigger that requires some action or alerts some
4 to an action.

5 If you think about it, entering a stop
6 loss with a broker is passing that responsibility
7 to him when a trigger is hit to execute an order.

8 So -- so many times stop-loss orders,
9 in my experience -- in fact, in the way I trade,
10 stop losses are -- are measures that alert us
11 internally to then take what action is
12 appropriate, given the market conditions and
13 given the liquidity present in the options that
14 we are trying to trade.

15 Q Okay. So if I am understanding you
16 correctly, a stop-loss measure in the options
17 market, at least with regard to your strategies,
18 is a measure to alert you to take certain action?

19 A Yes. And I would suggest that that's
20 also present in any trade strategy.

21 In options, perhaps more relevant
22 because, again, of the liquidity issues in
23 options relative to other types of securities,
24 wider bid-offer spread.

25 (Reporter clarification.)

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1 BY MR. BENSON:
 2 Q So what are the certain actions that
 3 you would take with regard to a stop-loss measure
 4 in the options market?
 5 A Well, that's -- that's highly dependent
 6 on the -- the particular situation, as I
 7 mentioned.
 8 It depends on, first of all, the
 9 premise behind setting up that stop-loss order,
 10 but probably, more importantly, what are the
 11 market conditions, what are the options
 12 positions?
 13 There's a lot of judgment involved in
 14 what action to take.
 15 Q Right. And I appreciate that.
 16 I'm just asking if you could identify
 17 the specific actions that you could choose from,
 18 using your judgment and discretion.
 19 A Sure. So in the -- in the options
 20 arena, well, when I -- when I go in to make
 21 adjustments to positions, there's a wide array of
 22 choices available.
 23 I can buy back short options. I can
 24 sell long options. I can simultaneously buy and
 25 sell options. I can buy an option in a

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1 particular expiration month and sell an option in
 2 a different expiration month. I can buy an
 3 option at a particular strike. I can sell an
 4 option at a different strike and/or a different
 5 expiration month.
 6 Those are typical actions that I would
 7 consider if I were executing some sort of
 8 stop-loss measure in my portfolio.
 9 Q Okay. And is that a -- an exhaustive
 10 list of the actions that you could take as a
 11 stop-loss measure?
 12 A It -- it may not be. There may be
 13 something that hasn't come to mind today.
 14 Q But sitting here today, those are the
 15 most common stop-loss actions that you can think
 16 of, right?
 17 A Yes.
 18 MR. BENSON: Thanks.
 19 BY MR. SCHMIDT:
 20 Q So one thing you said was that it could
 21 be a mechanical order that you give to your
 22 broker to sell at a certain price and then in
 23 some sense you're passing the responsibility on
 24 to the broker. Is that what you said?
 25 A Yes.

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1 Q But the broker isn't -- in that
 2 scenario isn't deciding what to do?
 3 He or she is just executing a decision
 4 you made or whoever instituted the stop loss,
 5 correct?
 6 A Yes.
 7 Q Okay. All right.
 8 What's an FCM?
 9 A Futures commission merchant.
 10 Q And how does that relate to what you
 11 do?
 12 A A futures commission merchant -- I will
 13 apologize if I get definitions incorrect -- but
 14 is essentially a commodity broker, someone that
 15 clears trades in various commodity markets.
 16 Q Okay. And how do they relate to your
 17 role as a portfolio manager?
 18 A They -- the instruments that I use in
 19 my fund, as a portfolio manager, are commodity
 20 instruments. They are equity based, but they are
 21 commodity instruments.
 22 So we have a -- a number of FCMs who we
 23 clear our trades through.
 24 Q Okay. So they are a necessary part of
 25 your --

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1 A Yes.
 2 Q -- trading strategy?
 3 A Right. They inventory our positions.
 4 Q Okay.
 5 A And guarantee performance on both sides
 6 of the transaction.
 7 Q Okay. Good. That's a good example of
 8 me not waiting until you were done with your
 9 answer. I apologize.
 10 Can you tell me the terms S&Ps versus
 11 minis? What are those?
 12 A The -- those are shorthand for two
 13 forms of S&P 500 index futures contracts.
 14 S&Ps are commonly meant to refer to the
 15 larger contract denominated \$250 per point.
 16 Q Um-hum.
 17 A Pit traded.
 18 The minis are a one-fifth size version
 19 of an S&P 500 futures contract traded via
 20 electronically.
 21 Q Okay. That leads to my next question.
 22 You said electronically traded versus pit traded.
 23 What does that mean?
 24 A The larger contract, the S&Ps, are
 25 traded in certain hours, open outcry, in the pit

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1 at the mercantile exchange, CME.
 2 Q The physical room?
 3 A Yeah, big room.
 4 Q Okay. Versus electronically traded on
 5 a computer, right?
 6 A Correct.
 7 Q And is it true that the larger
 8 contracts are not traded electronically, or are
 9 they?
 10 A I think they are. I've not done it,
 11 and I'm not -- I'm really not familiar. So that,
 12 again -- that would be an example of speculation
 13 on my part. I've never done it.
 14 I do think there may be some electronic
 15 trading of the larger contracts.
 16 Q Okay. And what about the minis?
 17 A Minis are traded on Globex -- the
 18 Globex exchange nearly 24-7.
 19 Q But not in the pit?
 20 A Not in the pit, no.
 21 Q Okay. Have you seen a transcript of
 22 your prior testimony?
 23 A I have not.
 24 Q Okay. There's a couple things that I
 25 want to review from what you testified about

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1 before, sort of to give us a general time line.
 2 I think it might help us to frame what we are
 3 talking about today.
 4 So Harbor Assets, L.L.C., is the
 5 predecessor private fund to the Catalyst Hedged
 6 Futures Strategy Fund, correct?
 7 A Correct.
 8 Q Okay. And Harbor Assets, L.L.C.,
 9 started trading in December 2005; is that right?
 10 A That's correct.
 11 Q And it was converted to a '40 Act
 12 mutual fund named Catalyst Hedged Futures
 13 Strategy Fund in or about August 2013; is that
 14 right?
 15 A That's correct.
 16 Q And since that time has continued as
 17 the Catalyst Hedged Futures Strategy Fund up to
 18 the present?
 19 A Correct.
 20 Q Okay. So for purposes of today, can we
 21 call those two phases the Harbor fund and the
 22 futures fund?
 23 A Yes.
 24 Q Okay. And that means just before and
 25 after the conversion. You understand that?

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1 A Correct.
 2 Q Okay. But it's essentially the same
 3 fund as well -- you -- same strategy?
 4 A Correct.
 5 Q Okay.
 6 A Same strategy, same manager.
 7 Q Okay. And can we agree that Catalyst
 8 means Catalyst Capital Advisors?
 9 A Sure.
 10 Q Okay. If at any point you think
 11 Catalyst -- that's confusing and should refer to
 12 something else, just let me no.
 13 A I will.
 14 Q Okay. During its entire existence,
 15 have you been the PM -- sorry -- portfolio
 16 manager of the Harbor fund and the futures fund?
 17 A I have.
 18 Q Okay. And approximately in December
 19 2014 to the present, a woman named Kimberly Rios
 20 has worked with you?
 21 A That's correct.
 22 Q And Ms. Rios is currently a portfolio
 23 manager for the futures fund, correct?
 24 A She is not currently, no.
 25 Q Okay. Was Ms. Rios ever a portfolio

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1 manager for the futures fund?
 2 A Yes.
 3 Q Can you give me the date range of when
 4 that occurred?
 5 A She was hired at some point. I can't
 6 give you exact, but I believe December of 2014 is
 7 a good approximation.
 8 And we've recently realigned
 9 responsibilities so that she does not work on the
 10 hedged futures fund. Recently meaning as of
 11 yesterday.
 12 Q Oh, okay. Very recently?
 13 A Very recently.
 14 Q Okay. So -- but through all of 2017,
 15 she was?
 16 A Yes.
 17 Q Okay. Now --
 18 MR. BENSON: Why did you -- if I can,
 19 Jake.
 20 MR. SCHMIDT: Yep.
 21 BY MR. BENSON:
 22 Q Who made the decision to realign Ms.
 23 Rios's responsibilities with regard to the
 24 futures fund?
 25 A I did.

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1 Q By yourself or with any input of
2 others?
3 A With her input.
4 She felt as though she needed to spend
5 more time focusing on the hedged commodity
6 strategy fund, which she has done a lot of
7 developmental research for and has functioned at
8 a co-portfolio manager with me since that fund's
9 inception.
10 Q And has the realignment of Ms. Rios's
11 responsibilities with regard to the futures fund
12 impacted her compensation in any way?
13 A Yes.
14 Q How?
15 A She had previously been paid a -- on a
16 variable basis based on assets in the hedged
17 futures fund. So that compensation ceases.
18 Q So is it fair to say that her
19 compensation has been reduced?
20 A Yes.
21 Q Okay. And how did she respond to that
22 fact?
23 A Well, it was at her request that we did
24 the realignment. We've had discussions for
25 several months.

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1 She's -- again, full transparency.
2 She's felt that this process has taken a lot of
3 energy relative to the hedged futures and that
4 she wanted to pull back from those
5 responsibilities, in addition to the significant
6 level of what I would call operating
7 responsibilities she had with hedged futures.
8 We have transitioned those out so,
9 again, she can focus on the commodities fund.
10 So that was a tradeoff that she was
11 willing to make.
12 Q Okay. And who has -- who, if anyone,
13 has taken over Ms. Rios's responsibilities
14 including but not limited to operational
15 responsibilities of the futures fund?
16 A I've taken on some of them, and Daniel
17 Saffrin, our analyst, has taken on some.
18 Q Okay. And Dan Saffrin graduated from
19 University of Wisconsin undergrad in what year?
20 A This year. No. I'm sorry. This year.
21 2017.
22 Q Okay. And will he be named as a
23 portfolio manager of the fund?
24 A We are not anticipating that at this
25 time.

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1 Q Okay. Have any notices been provided
2 to shareholders in the futures fund regarding the
3 realignment of responsibilities of you and Ms.
4 Rios?
5 A I provided notification and explanation
6 to the Catalyst sales force.
7 I believe, but I'm not certain, that
8 Catalyst is amending documents to reflect that,
9 that change.
10 Q Okay. And in what form did you notify
11 the Catalyst sales force of this change?
12 A In a telephone conference that's held
13 on a weekly basis with the sales force.
14 Q Okay. And have you advised the board
15 of trustees who oversees the futures fund of this
16 change?
17 A I don't interact directly with the
18 board.
19 Q Who does?
20 A The advisor.
21 Q And when you say "the advisor" --
22 A Catalyst.
23 Q -- to whom are you referring?
24 A Catalyst.
25 Q Okay. And do you know whom -- who at

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1 Catalyst interacts with the board?
2 A I believe Jerry Szilagyi does.
3 Q And is it your understanding -- do you
4 have an understanding of whether Mr. Szilagyi has
5 a role in the board?
6 A I believe he does.
7 Q And what is your understanding of his
8 role on the board?
9 A He's a participate, I know for sure.
10 Beyond that, I'm not certain.
11 Q Thank you.
12 A A member, I guess, is a better term. I
13 know he's a board member, but --
14 Q Thank you.
15 A -- beyond that, I don't know.
16 24
17 1 BY MR. SCHMIDT:
18 Q So is it fair to say that this
19 realignment was something that Ms. Rios requested
20 and not something that you had raised initially?
21 A That's correct.
22 Q Okay. Is Ms. Rios also compensated
23 based on her work for the commodity fund?
24 A Yes, she is.
25 Q And, again, we'll get to it, but the --

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1 what is the full name of the commodity fund?
 2 A Catalyst Hedged Commodity Strategy
 3 Fund.
 4 Q Okay. And we can just call it the
 5 commodity fund for today?
 6 A Sure.
 7 Q Okay. So before and after the
 8 realignment, part -- was -- part of her
 9 conversation -- compensation was based on her
 10 work for the commodity fund?
 11 A Yes.
 12 Q Did that get changed in any way upon
 13 the realignment?
 14 A No.
 15 Q Okay. I think you said that Ms. Rios
 16 was hired in December of 2014?
 17 A That's my best recollection, yeah.
 18 Q Was she hired as a portfolio manager
 19 for the futures funds, or was she hired in a
 20 position separate from that?
 21 A The intent was to place her in a
 22 portfolio manager position, which we did.
 23 I don't recall for sure if we hired her
 24 immediately as a portfolio manager or not.
 25 Q Okay. Do you have any understanding as

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1 to how quickly she became a port -- portfolio
 2 manager, or is there a point in time when
 3 you're -- when you can say by mid 2015 she was
 4 definitely a portfolio manager for the futures
 5 funds?
 6 A I honestly just don't recall.
 7 Q You don't recall. Okay.
 8 So let's talk about the time when both
 9 you and Ms. Rios are portfolio managers for the
 10 futures fund, which continued up until, we'll say
 11 the end of March --
 12 A Correct.
 13 Q -- 2018. Okay?
 14 That entire period you're the senior
 15 PM?
 16 A That's correct.
 17 Q And Ms. Rios is the assistant PM?
 18 A Correct.
 19 Q Okay. Can you tell us what that means
 20 in terms of day-to-day responsibilities and how
 21 the fund operates?
 22 A Sure. And at a -- at the highest
 23 level, that means that I was responsible for the
 24 ultimate determination of trades, position
 25 adjustments, the core of the portfolio management

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1 responsibilities, as I would describe them.
 2 Ms. Rios was responsible for analyzing
 3 markets, positions, suggesting trades, responding
 4 to my requests for information. She at some
 5 point became responsible for the fixed income
 6 portion of the funds' activities so she would
 7 monitor cash levels in the funds -- the fund and
 8 suggest to me treasury purchases, other fixed
 9 income instrument type of purchases.
 10 She also -- outside of the fixed income
 11 part of the equation, yeah, really analytical
 12 support, trade recommendations with an ultimate
 13 goal that she would some day participate in the
 14 trading -- directly in the trading of the fund,
 15 but that did not -- that did not happen.
 16 Q Okay. So at all times you have the
 17 final say on what the fund is doing?
 18 A Correct.
 19 Q And that's true even with respect to
 20 the fixed income portion? She makes suggestions,
 21 she does the analysis, but it's really up to you
 22 as to how you're going to allocate the fund's
 23 assets?
 24 A That's correct.
 25 Q Okay. Was there any portion of the

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1 management of the fund in which Ms. Rios had the
 2 final say?
 3 A I would say no. I mean, I'll qualify
 4 that by the fact that I did give her some
 5 discretion on the fixed income side so it wasn't
 6 the case that every single time she brought a
 7 treasury bond that I approved it.
 8 Q Okay. I got it.
 9 But to do that, she needed you to say
 10 it's okay as opposed to you never needed her to
 11 say anything is okay for you to make a decision?
 12 A That's correct.
 13 Q Okay.
 14 BY MR. BENSON:
 15 Q Before we go on, did you need to get
 16 approval from Catalyst to make any portfolio
 17 management decisions?
 18 A Generally, no. I'm just trying to be
 19 comprehensive in thinking about whether there are
 20 any cases in which I did, but generally, no. At
 21 least -- well, it depends on time frame so --
 22 Q Right. And we're focusing from 2013
 23 all the way through today.
 24 A Right. So -- so in, I want to say
 25 October or November of 2017, Catalyst -- as a

1 part of our new risk control and risk framework
2 that was instituted, Catalyst instituted a trade
3 approval policy. So there were certain
4 conditions which had to be met for me to exercise
5 full discretion in placing a trade and certain
6 conditions by which I had to request approval
7 from the Catalyst risk process.

8 Q So let's go from conversion to a mutual
9 fund in mid 2013 up until, say, the summer of
10 2017, before this policy is instituted.

11 Are there any occasions where you
12 needed Catalyst approval to execute the strategy
13 of the portfolio?

14 A Not a formal approval. The situation
15 I'll describe is that, when -- when certain of
16 our risk triggers were activated, particularly in
17 December of 2016, then a Catalyst risk committee
18 was convened, and reactions to the determination
19 of the best measures to take to alleviate the --
20 the risk condition were made jointly.

21 Q Okay. So -- and how long did that
22 continue, if that started in December of 2016?

23 A That occurred at every time that we had
24 a situation where we had a risk trigger. In
25 other words, when -- if we had a risk trigger,

1 then the committee would get on the phone. We
2 would discuss alternatives and come to a
3 consensus on -- on how to proceed.

4 Q You mean after December 2016?

5 A Yes.

6 Q Okay. So going -- so going from the
7 creation of the futures fund in mid 2013 up till,
8 say, the end of November 2016, before the risk
9 committee is formed, are there any instances
10 where you need Catalyst approval to inter-trade,
11 to execute trades, to do your strategy?

12 A No, outside of conforming the
13 prospectus. So there were -- there were no
14 circumstances there where I needed a specific
15 trade approval.

16 Q Okay. In your previous testimony, you
17 described both what you characterize as a call
18 strategy and a put strategy. And I just want to
19 make sure I understand what you're talking about.
20 Okay?

21 A Sure.

22 Q So the call strategy, you buy long-call
23 options above the market and sell -- or you buy a
24 long-call option above the market and sell two or
25 three call options usually at or near the same

1 premium; is that correct?

2 A Correct.

3 Q Okay. And you call that either a one
4 by two, which is buy one, sell two, or one by
5 three, buy one, sell three?

6 A Correct.

7 Q Okay. And sometimes you also refer to
8 this as the above-the-market strategy; is that
9 correct?

10 A Well, I mean, it's our -- our low
11 volatility strategy. It's driven by volatility
12 analytics, but it's generally a strategy we are
13 employing with call options, which are above the
14 market.

15 Q Okay. And in -- can I just call it the
16 call strategy?

17 A Sure. Sure.

18 Q Okay. In the call strategy, all the
19 legs of your position are in the same expiration
20 month; is that correct?

21 A At entry, yes.

22 Q Okay. And then you also have a put
23 strategy, and obviously instead of buying calls,
24 you're buying puts, right?

25 A Buying and selling puts.

1 Q Buying and selling puts.

2 Instead of all the expirations being in
3 the same month, you're doing calendar spreads,
4 and they are in different months; is that
5 correct?

6 A Correct.

7 Q Is there any other way that the put
8 strategy differs from the call strategy?

9 A It's driven by different volatility
10 conditions in the market.

11 It's -- the put strategy, it's a one --
12 what's the right word? One constraint on the put
13 strategy, for example, is we don't use -- we
14 don't have more short options than long on the
15 put side.

16 Q Okay.

17 A So there aren't -- there aren't ratios
18 involved in the same way as the call strategy.

19 Q I see. Okay. When you were PM of the
20 Harbor fund before it converted, did you use the
21 call strategy and the put strategy?

22 A Yes.

23 Q Okay. When -- has that been the
24 strategy since the beginning?

25 A Yes.

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1 Q Okay. In 2007, the Harbor fund
 2 experienced a drawdown; is that correct?
 3 A Yes.
 4 Q All right. And from that experience,
 5 you developed certain risk parameters?
 6 A Correct.
 7 Q And although it didn't result in a new
 8 trading strategy, it affected the way you sized
 9 positions and exposed yourself to volatility; is
 10 that fair?
 11 A Yes.
 12 Q Okay. And when the Harbor fund
 13 converted over to the future fund, you continued
 14 those risk parameters?
 15 A Yes.
 16 Q And at some point after conversion,
 17 George Amhrein, A-m-h-r-e-i-n, was appointed
 18 chief risk officer of Catalyst, correct?
 19 A Yes.
 20 Q And you and he collaborated on certain
 21 additional risk factors?
 22 A Yes.
 23 Q Let me show you what's been marked as
 24 Exhibit 17.
 25 So it's my understanding that this is

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1 the state of those risk factors as of December
 2 2014, which would be approximately a year and a
 3 half after conversion; is that correct?
 4 A I -- I don't recall this specific
 5 document. I recognize the fact that the pages --
 6 or the items on it, but we did a lot of work with
 7 drafts.
 8 I don't know if this is a final version
 9 or not. I'm not sure.
 10 MR. ZILIAK: If I may, is there a Bates
 11 number on this document, or where did this come
 12 from, please?
 13 MR. SCHMIDT: There is a Bates. It's
 14 not -- for some reason, it doesn't print, but the
 15 Bates is SEC_01_0003055.
 16 MR. ZILIAK: Thank you.
 17 MR. BENSON: And, Zach, you'll notice
 18 throughout today's testimony there will be
 19 instances where we have marked documents that do
 20 not have a Bates stamp. There -- there was a
 21 production issue that has subsequently been
 22 resolved, but certain of those files were not.
 23 MR. ZILIAK: Okay. I'll just try to
 24 remember to ask.
 25 MR. SCHMIDT: Yeah. And we can also

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1 get them to you at breaks or afterwards too.
 2 However you want to do it.
 3 MR. ZILIAK: Okay.
 4 BY MR. SCHMIDT:
 5 Q So I'm not really concerned whether
 6 this is final or not.
 7 Assuming that the date is accurate,
 8 this is about a year and a half after conversion,
 9 correct?
 10 A Correct. I mean, I recognize it to be
 11 a draft just by looking at it because there are
 12 some -- there are some errors in terminology on
 13 here that even in my worst moment I would not
 14 have produced.
 15 Q Okay. All right. Thank you for that.
 16 We'll go over those.
 17 Previously when you looked at this
 18 document in your previous testimony, you
 19 indicated that risk parameters 1, 2, and 6, which
 20 are no positions in markets outside of the S&P
 21 500, that's Risk Parameter 1. Risk Parameter 2
 22 is no futures positions open overnight. And Risk
 23 Parameter 6, which is maximum drawdowns, five
 24 percent in one week, eight percent in one month.
 25 Those were parameters that you had added in

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1 collaboration with Mr. Amhrein; is that correct?
 2 A Those are -- yeah. Those are
 3 parameters that I suggested be added to the list
 4 that weren't present in the prior fund.
 5 Q And that's all I'm -- I am trying to
 6 determine what you came up with in the wake of
 7 your experience in 2007 and then what was added
 8 after your collaboration with Mr. Amhrein.
 9 A Okay.
 10 Q So that means that Risk Parameters No.
 11 3, 4, 5, and 7 are essentially the ones you came
 12 up with before Mr. Amhrein's involvement?
 13 A Just give me a moment to look --
 14 Q Sure.
 15 A -- at 3, 4, 5, and 7.
 16 MR. WASSERMAN: While the witness is
 17 taking a moment, Mike on the phone is having
 18 trouble hearing. Can we move this over there --
 19 MR. SCHMIDT: Yes, certainly.
 20 MR. WASSERMAN: -- or wherever --
 21 wherever the microphone is.
 22 (A discussion was held off the record.)
 23 THE WITNESS: Could you -- now that
 24 I've looked at it, just repeat the question for
 25 me, if you would.

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1 BY MR. SCHMIDT:
 2 Q Sure. So I will just give you sort of
 3 my -- my overall understanding. You can let me
 4 know if it's right or not.
 5 A Okay.
 6 Q The ones that were added based on your
 7 collaboration with Mr. Amhrein are 1, 2, and 6.
 8 And I'm just asking does that mean that the other
 9 ones, which are 3, 4, 5, and 7, are the ones that
 10 you developed essentially in the wake of your
 11 experience of the 2007 drawdown?
 12 A They are. Again, 7 is mislabeled in
 13 terms of its risk, but they were present by
 14 definition.
 15 Q Okay. So No. 7 is mislabeled. I think
 16 you mentioned there were certain errors.
 17 Is that the only error in terminology?
 18 A That -- that's the only one that caught
 19 my eye --
 20 Q Okay.
 21 A -- in a quick glance.
 22 Q Okay. And we'll go into that.
 23 Let me show you what's been marked as
 24 SEC Exhibit 41.
 25 So at some point in time, these risk

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1 factors were finalized into a report, right?
 2 A Correct.
 3 Q A daily report?
 4 A Yes.
 5 MR. ZILIAK: And just remind us,
 6 please, when you describe these as being marked
 7 as Exhibit 41, when were they so marked please?
 8 MR. BENSON: In connection with this
 9 investigation.
 10 MR. ZILIAK: So not necessarily with
 11 Mr. Walczak's previous testimony. With other
 12 interviews perhaps?
 13 MR. BENSON: Perhaps.
 14 MR. SCHMIDT: Yeah. I -- I actually
 15 don't know off the top of my head whether it was
 16 marked with his or not. I don't know.
 17 MR. ZILIAK: Okay.
 18 MR. BENSON: Yeah. That's a very good
 19 point. Because a document bears a Bates -- bears
 20 an exhibit sticker doesn't necessarily mean it
 21 has been used in connection with a -- a witness.
 22 As you experienced in your life, sometimes people
 23 will premark Exhibits 1 through, you know, a
 24 thousand, and as they see fit, they will use the
 25 exhibit.

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1 MR. ZILIAK: Fair enough. Thank you.
 2 BY MR. SCHMIDT:
 3 Q So I -- I apologize if I'm repeating,
 4 but I don't know if there was an answer.
 5 The risk parameters at some point were
 6 finalized and then resulted in a daily report?
 7 A Correct.
 8 Q Okay. Is Exhibit 41 a -- an example of
 9 that daily report?
 10 A Yes. It appears to be.
 11 Q And you would get the daily report each
 12 morning; is that correct?
 13 A Yes.
 14 Q Ms. Rios would receive it as well?
 15 A I believe so, whoever is on the
 16 distribution list.
 17 Q Okay.
 18 A Yeah.
 19 Q And you recognized George A as Mr.
 20 Amhrein?
 21 A Yes.
 22 Q Okay. So do you know about when the
 23 risk parameters were finalized into a daily
 24 report?
 25 A I don't recall.

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1 Q In any event, it was before December of
 2 2016; is that correct?
 3 A Yes.
 4 Q Okay. So let's just walk through this
 5 document, which is Exhibit 41. So if you go down
 6 the risk parameters, there's differences between
 7 those risk parameters and what's on Exhibit 17.
 8 I just want to understand the difference. Okay?
 9 A Okay.
 10 Q So No. 3 on 17 is AMU ratio?
 11 A AUM.
 12 Q AUM ratio on 17, and it's changed to
 13 margin to NAV ratio, N-A-V. Do you see that? It
 14 says at the top of Page 2.
 15 A Page 2, yes.
 16 Q Okay. Why that change?
 17 A Well, in -- in general, an answer to
 18 any question related to this document is that
 19 it's a -- it appears to me to be a very
 20 preliminary draft.
 21 And, once again, that's a -- that's the
 22 second one that -- that I should have highlighted
 23 as a mislabeling.
 24 Q Okay.
 25 MR. ZILIAK: I'm sorry. You're saying

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1 that Exhibit 17 is the draft?

2 THE WITNESS: Yes. Exhibit 17 is a
3 draft that contains, as drafts do, several
4 mislabelings that I can identify and potentially
5 differences in quantities or in metrics.

6 BY MR. SCHMIDT:

7 Q Okay. So that would fall in the -- the
8 category of a mislabeling?

9 A Correct.

10 Q Okay. No. 4 on 17 is open options
11 premium value. And in the final report, it gets
12 split into two risk parameters, one for calls and
13 one for puts. Do you see that?

14 A Yes, I do.

15 Q Okay. Do you know why that happened?

16 A To -- to my mind, it's always been that
17 way. Again, this is a draft. Incorrect in some
18 ways and certainly incomplete.

19 Q Okay. That --

20 A I'm referring to Exhibit 17 when I call
21 it the draft.

22 Q Okay. So really that risk parameter
23 didn't change. It was just the -- it's just a
24 reflection of the draft status of Exhibit 17?

25 A The intent, I believe, is -- is the

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1 same.

2 Q Okay. Same thing with No. 5, position
3 limits, it's split into one for calls, one for
4 puts. Is your answer the same?

5 A Yes, it is.

6 Q Okay. No. 6, change in NAV. It's
7 split into two separate risk parameters, but it
8 appears it's -- it's the same, right?

9 A Again, the intent is the same.

10 Q And you mentioned this before. No. 7
11 was gamma risk. It's now called put ratio. That
12 was another mislabeling?

13 A Correct.

14 Q But the same risk parameter, in your
15 mind?

16 A The same intent.

17 Q Okay. The next column is metric. And
18 this is -- next column on Exhibit 41 I'm talking
19 about.

20 A Okay.

21 Q And this is essentially the measurement
22 that is -- or what is being measured to determine
23 whether or not the risk parameter has been
24 triggered, correct?

25 A Yes.

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1 Q Okay. Can you explain to me the two
2 different metrics for margin to NAV ratio?

3 A Sure. The SPAN margin is the exchange
4 minimum standard margin. SPAN is the acronym for
5 the algorithm that calculates risk that's
6 generally accepted, again, at the CME level and
7 at FCM.

8 So, again, this is a common denominator
9 across FCMs and across people that use SPAN
10 margining.

11 The second margin is the actual margin
12 charged by an FCM.

13 FCMs at their discretion can charge
14 more than or -- or require more than SPAN margin
15 collateral for positions.

16 Q And why is each important in terms of
17 needing to monitor them in the context of risk
18 parameters?

19 A So the SPAN margin, at least in my
20 mind, reflects a -- an independent third-party
21 assessment of the risk of a particular position,
22 and, again, it's standardized across -- across
23 different FCMs and -- and across our portfolio.

24 So that's important as a measure of
25 risk, which is why it's on the -- as a measure of

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1 actual risk, what I would say is risk of loss in
2 the portfolio.

3 The second one is a -- a derivative of
4 the first, the derivative being that each
5 individual FCM, for a variety of reasons, some
6 risk based, some business based, elected to
7 require a higher than exchange minimum SPAN
8 margin for our positions.

9 So this doesn't add a lot of
10 information to us in terms of actual risk of
11 loss, but it does reflect a potential liquidity
12 risk for the portfolio, meaning, if that number
13 gets too high, independent of actual risk, we
14 have the risk that we wouldn't have collateral
15 available to meet a broker requirement. That
16 could require adverse position adjustments.

17 So that's -- that's the real-world
18 collateral number. The -- the common denominator
19 SPAN number is a more pure risk-based measure
20 across all of the broker partners.

21 Q Okay.

22 MR. ZILIAK: By the way, can I just ask
23 that tentatively in the next maybe five to ten
24 minutes we take a break? Is that possible?

25 MR. SCHMIDT: Yeah. Could I just get

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1 through this exhibit?
 2 MR. ZILIAK: Sure. Of course.
 3 Absolutely.
 4 BY MR. SCHMIDT:
 5 Q So the actual margin-to-NAV ratio does
 6 indicate at least some potential loss if you had
 7 to take those adverse positions that you didn't
 8 want to take?
 9 A The measure itself I don't find to be
 10 related to an actual dollar amount of loss in the
 11 portfolio, but the -- its level and changes in
 12 its level certainly are reflective of changes in
 13 risk, again, as assessed by a third-party
 14 independent algorithm.
 15 Q Okay. And the liquidity problems could
 16 lead to losses?
 17 A Yes.
 18 Q Right? Okay. That's what I wanted to
 19 understand.
 20 1 BY MR. BENSON:
 21 Q When you were talking, Mr. Walczak,
 22 about additional margin requirements, are you
 23 referring to a cap charge?
 24 A No. A cap charge, if I understand the
 25 term correctly, is something different.

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1 What I believe a cap charge is is
 2 simply a -- an FCM imposing an additional fee for
 3 collateral held on our -- for us supplying them
 4 the collateral.
 5 Typically that's a -- a reflection of
 6 our trading activity not being profitable enough
 7 for the broker so the broker says we are going to
 8 put an extra fee on top of your margin
 9 requirements to make your business profitable.
 10 Q And did that ever happen?
 11 A Yes.
 12 Q And was that additional fee -- that cap
 13 charge, was it significant at any point --
 14 A I don't --
 15 Q -- in your view?
 16 A I don't believe so. We -- we -- it
 17 wasn't common, and we evaluated the commission
 18 rates versus alternate commission rates, plus or
 19 minus the cap charge.
 20 In other words, we -- we looked at our
 21 average volume. We said if the cap charge is X
 22 and their commission rate is Y, if we assume a
 23 certain number of contracts, what's the true
 24 commission rate, and is that still competitive
 25 with other offerings? So that's how we treated

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1 it.
 2 Q Thank you.
 3 BY MR. SCHMIDT:
 4 Q Do you remember when that happened?
 5 A I don't. I don't even remember which
 6 specific brokers used it. Not all of them. Not
 7 very many, I don't believe.
 8 Q Would this be an example of one of the
 9 research or analysis assignments that you would
 10 have Ms. Rios do?
 11 A Yes.
 12 Q So if we search the e-mails and we look
 13 for "cap charge," that would give us a good idea
 14 of probably when this popped up?
 15 A Yeah, that probably would. Yeah.
 16 Q Okay.
 17 A I mean -- right. We go through an
 18 introducing broker, who we also use to manage and
 19 negotiate on our behalf the -- the collection of
 20 FCMs we have. So -- so that's where you'd
 21 probably see the -- the details.
 22 Q Is that Mr. Regger?
 23 A Yes.
 24 Q Paul Regger?
 25 A Yes.

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1 Q If we look at open-options premium
 2 value, it says less -- again, it's split into one
 3 for calls and one for puts.
 4 The metric is less than six percent
 5 NAV, and on the draft, which is 17, it was less
 6 than eight percent AUM. Now, the AUM and NAV is
 7 another one of those terminologies.
 8 A The meaning is the same in my mind.
 9 Q Okay. But one is six percent and one
 10 is eight percent. So why the change there?
 11 A Again, this is a draft.
 12 Q Okay. Was there a conscious decision
 13 to put it at six instead of eight?
 14 A We did make that decision actually in
 15 2016.
 16 Q Who is "we"?
 17 A Myself, in consultation with George
 18 Amhrein and Jerry Szilagyi.
 19 Q Do you know when in 2016?
 20 A I'll give you a -- plus or minus a
 21 month, probably July.
 22 Q Okay. And was that decision made
 23 before this was finalized, or had these reports
 24 already been coming out and then that decision
 25 was made?

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1 A The risk framework had been finalized.
 2 This -- this report is generated by a -- a
 3 portfolio aggregation software that we call Model
 4 Alpha, which essentially aggregates our positions
 5 across our FCMs.

6 When we first began to track risk, we
 7 did that manually and -- and onboarded to Model
 8 Alpha at some point. Again, I don't remember
 9 exactly when.

10 So at some point, we had formal risk
 11 metrics in place under which that metric was
 12 eight percent. And at some point, I believe
 13 roughly July of 2016, we elected to reduce it
 14 from eight percent to six percent.

15 Q Why?

16 A We -- we had a risk trigger in July of
 17 2016 that -- that caused us, as they always do,
 18 to evaluate the framework and -- and the
 19 appropriateness of the levels.

20 Q So when you say, "We had a risk
 21 trigger," specifically to open options premium
 22 value?

23 A No. If I recall right, we actually
 24 triggered on -- on one or both of our margin
 25 numbers.

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1 We may have triggered others, but
 2 that's the one I remembered.

3 Q Okay. So there's a trigger on some
 4 risk parameter. You think it might be margin.
 5 It causes you to have a discussion with Mr.
 6 Szilagyi and Mr. Amhrein. The end of that
 7 discussion is producing this particular risk
 8 parameter metric from eight percent to six
 9 percent?

10 A Correct.

11 Q Okay. But why is what I want to know.
 12 I understand that that's the end result. Why?

13 A Well, and the other -- by the way, my
 14 recollection says we also reduced our position
 15 constraints on the call side.

16 Q Okay.

17 A In fact, this is -- yes. This is
 18 post-reduction because I'm seeing a 50, and I
 19 recall it to have been 60, like the puts, and we
 20 reduced it.

21 We evaluated the reason for the risk
 22 trigger, and we, in somewhat of a subjective
 23 judgmental fashion, chose to reduce position
 24 sizing and open-option premium limits because
 25 those are the things that will typically drive

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1 margin and -- and our main drivers of risk in the
 2 portfolio, at least in my -- my opinion.

3 Q So is it fair to say that the risk
 4 trigger or the risk parameter was triggered, you
 5 guys got together and evaluated it, and decided
 6 that maybe it got triggered too early and,
 7 therefore, you would adjust these other risk
 8 parameters so that it isn't triggered as early?

9 A No. The -- this adjustment actually
 10 makes the risk parameters tighter.

11 Q It makes it tighter?

12 A Yes.

13 Q Okay.

14 A This would cause triggers to be hit
 15 earlier.

16 Q And so is there any -- are there
 17 e-mails, are there memos, is there anything about
 18 this actual analysis and decision to modify the
 19 risk parameters in the summer of 2016?

20 A I don't know. I suspect that you have
 21 them, if there are.

22 Q Sitting here today, do you know whether
 23 there are any? Have you seen any?

24 A I don't know, no.

25 Q Okay. Going down on the metrics, it

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1 says change in NAV per share week, five percent
 2 in one week. Do you see that?

3 A Yes.

4 Q Is that a calendar week or the last
 5 seven days?

6 A I don't recall what is built into this
 7 calculation. The intent is five trading days.

8 Q Five trading days. Okay.

9 And same question for eight percent and
 10 one month. Is it --

11 A That's clearly a calendar -- the intent
 12 is a calendar month. Again, what -- whether
 13 there's 22 trading days built in here or whether
 14 there's a calendar in this report, I'm not 100
 15 percent sure.

16 Q Okay. So the two options for that one
 17 are either it's month to date or the last 22
 18 approximate calendar -- or trading days?

19 A Correct.

20 Q Okay.

21 A It's our -- let me step back.

22 Month date is not the case. It's
 23 clearly a rolling period of some kind.

24 Q Okay. So you think it's some --

25 something close to 22, 20 to 22 of the previous

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1 trading days?
 2 A Correct.
 3 Q And it rolls?
 4 A Correct.
 5 Q Okay. The next column is just the
 6 current reading of the metric, right?
 7 A Yes.
 8 Q So the way you read this report, it
 9 tells you where it should be or where the trigger
 10 is, and then the next column tells you whether or
 11 not you're above or below that trigger?
 12 A Yes.
 13 Q Okay. "Reported by" is where you get
 14 the information that generates the numbers in the
 15 third column?
 16 A Yes.
 17 Q Okay.
 18 MR. ZILIAK: Sorry. You say the third
 19 column. It's actually -- oh, reported in the
 20 third. So the source.
 21 MR. SCHMIDT: Yep.
 22 MR. ZILIAK: I'm sorry. Go ahead.
 23 1 BY MR. SCHMIDT:
 24 Q Yeah. Do you understand what I said,
 25 Mr. Walczak?

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1 A Yes. Say it again.
 2 Q So "reported by" is where you get the
 3 information that generates the numbers in the
 4 third column?
 5 A Yes. Yes.
 6 Q Okay.
 7 MR. ZILIAK: Sorry. My fault.
 8 MR. SCHMIDT: That's all right.
 9 BY MR. SCHMIDT:
 10 Q Fifth column, "corrective action,"
 11 that's the action that must be taken if a
 12 parameter is triggered?
 13 A Correct.
 14 Q Okay. Sixth action -- sixth column is
 15 "action required," and it's either a yes or no,
 16 right?
 17 A Yes.
 18 Q Okay. So if a risk parameter is
 19 triggered, that column should flip from no to
 20 yes?
 21 A It should.
 22 Q Does it always?
 23 A No.
 24 Q Okay. Is that a known sort of error of
 25 this report?

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1 A Yes, it is.
 2 Q Okay. So do you go by whether the
 3 third column is above or below the metric in the
 4 second column to determine whether a risk
 5 parameter has been triggered?
 6 A Yes.
 7 Q So, for example, if you look all the
 8 way at the bottom, "put ratio," it says, "Must be
 9 greater than or equal to one." It is less than
 10 one, right?
 11 A Yes.
 12 Q So this one has been triggered on this
 13 particular report; is that correct?
 14 A By this report, yes. But to be honest,
 15 I don't believe it.
 16 BY MR. BENSON:
 17 Q Why not?
 18 A Because I don't ever recall in the
 19 portfolio having a position that would generate
 20 that kind of ratio.
 21 Q So are you aware of expressing your
 22 disbelief of that figure?
 23 A I -- I don't recall it. Um...
 24 Q Do you recall having any conversations
 25 with Manamu Solutions or anyone at Catalyst to

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1 express your disbelief in the accuracy of these
 2 reports?
 3 A From time to time I would have -- I
 4 would have discussion with Kimberly, Ms. Rios,
 5 and she would generally be the point of contact
 6 with -- with Model Alpha Manamu Solutions.
 7 Q So at the bottom it says -- you see it
 8 says --
 9 A Right.
 10 Q -- call contract, put contract long,
 11 put contracts short, right? So 3,000 long
 12 contracts, 5,000 short contracts. Would that
 13 generate a .6 put ratio?
 14 A Yeah. If -- if those numbers are
 15 correct, that would generate a .6, and, again,
 16 I'm just -- if -- if you ask me if this were ever
 17 the case without showing this report, I would
 18 tell you no, because of my recollection, I don't
 19 recall ever violating that particular metric.
 20 Q Okay. But if we looked at your actual
 21 trading and it showed those number of contracts,
 22 that would be the right answer, right?
 23 A Yeah. It's -- and it's possible I'm
 24 mistaken certainly.
 25 Q Sure. Okay. So -- so put aside your

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1 sort of feelings about this particular day. The
 2 way the report is supposed to function is, if it
 3 is less than the metric, then no should flip to
 4 yes, right?
 5 A Yes.
 6 Q And it doesn't on this particular
 7 report?
 8 A Correct.
 9 Q And that has happened on other times.
 10 And what you're really looking at is the third
 11 column compared to the second column?
 12 A Correct.
 13 Q Okay. The last column is elevation.
 14 This is who has to be notified if a risk
 15 parameter is triggered, right?
 16 A Yes.
 17 Q And who's responsible for notifying
 18 that person?
 19 A Generally speaking, if the CEO needs to
 20 be notified, I would expect the risk officer to
 21 do it. If the risk officer needs to be notified,
 22 I would do it. The -- in practice, the risk
 23 officer receives these reports.
 24 So that is his de facto notification.
 25 Q Okay. So the risk officer is

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1 automatically notified by virtue of receiving the
 2 report, and if the CEO has to be notified, that's
 3 the risk officer's job, not your job; is that
 4 correct?
 5 A That's correct.
 6 Q Okay. One second.
 7 MR. SCHMIDT: If anybody else has a
 8 question about these -- these documents, we can
 9 ask, or I think he wanted a break. So do you
 10 have anything? Let's take a break. We are off
 11 the record at 10:15 a.m.
 12 (A brief recess was taken.)
 13 MR. SCHMIDT: We are back on the record
 14 at 10:31 a.m.
 15 BY MR. WASSERMAN:
 16 Q Mr. Walczak, just to clarify and to
 17 reiterate what we discussed at the beginning of
 18 your last testimony in -- before us in October of
 19 2017, I believe it was -- I'm Sam Wasserman from
 20 the CFTC.
 21 Prior to that testimony, we've put in
 22 front of you what's marked CFTC Exhibit 1, which
 23 is our Statement to Persons Providing Information
 24 to the CFTC.
 25 Can you confirm that you have had a

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1 chance to review that with your counsel?
 2 A I have.
 3 Q And do you have any questions on it?
 4 A I do not.
 5 Q To remind you, the CFTC is conducting
 6 an investigation named Catalyst Capital Advisors.
 7 Your testimony here today is in connection with
 8 that investigation.
 9 And to -- to clarify one -- well, first
 10 of all, the parameters that we discussed at our
 11 earlier interview remain the same, and to remind
 12 you that with respect to questions from me, your
 13 answers are voluntary.
 14 Do you understand that today?
 15 A I do.
 16 BY MR. SCHMIDT:
 17 Q Mr. Walczak, in addition to the futures
 18 fund, you also mentioned the commodity fund,
 19 correct?
 20 A Correct.
 21 Q Okay. And you're a portfolio manager
 22 for the commodity fund?
 23 A I am.
 24 Q And Ms. Rios is also a portfolio
 25 manager for the commodity fund?

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1 A She is.
 2 Q The commodity fund began trading in or
 3 about September of 2015; is that correct?
 4 A Correct.
 5 Q And have you and Ms. Rios been
 6 portfolio managers for the entire time that
 7 the -- the commodity fund has existed?
 8 A Yes.
 9 Q Okay. And is it the same relationship
 10 between you and Ms. Rios with respect to the
 11 commodity fund as it is with respect to the
 12 futures fund?
 13 A Ms. Rios takes a significantly greater
 14 role in determining and executing trades on the
 15 commodity fund.
 16 Q Okay. So has that always been the
 17 case, or is that something that has evolved over
 18 time?
 19 A That has evolved over time.
 20 Q Okay. Can you give me a sense of the
 21 division of responsibilities at the beginning,
 22 how it's evolved, and if you can, when it has
 23 evolved? So we're starting in September of 2015.
 24 A At the inception of the fund, I was the
 25 primary trader on the fund, in fact, the only

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1 trader. Well, let me amend that.

2 I was the primary -- I did do --
3 physically execute some of the trades. Almost
4 immediately Ms. Rios began to execute the trades,
5 but these were trades that were basically
6 determined by me.

7 At some point -- and it was a gradual
8 evolution. There wasn't a switch flipped -- she
9 was given discretion over determining and
10 executing her trades.

11 So I guess a quick summary of that
12 means she's always done the trading. The
13 selection, determination of what trades to do and
14 what adjustments to make evolved from 100 percent
15 me to now probably 75 or 80 percent Ms. Rios.

16 Q Okay. And before Ms. Rios executes a
17 trade that she has decided to make, does she
18 review that with you?

19 A That's the last part of the evolution
20 process. So I determine the trades. Then she
21 determines trades, and I approve them.

22 And now she will -- she has autonomy to
23 do trades, and I review the portfolio on a
24 regular basis.

25 Q Okay. Does -- do you sit down with her

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1 and say, what's your plan for this week, and she
2 tells you, and then she goes out and does it? Or
3 do you review things after the fact?

4 A Both.

5 Q Okay.

6 A We have a fairly regular routine of
7 communicating. So she communicates to me her
8 plan.

9 There are times when we collaborate on
10 very -- very specifically on trades and
11 adjustments, but that's generally how the
12 relationship works.

13 Q And is it the same sort of hierarchal
14 relationship in that you are the senior portfolio
15 manager and she is the assistant portfolio
16 manager?

17 A It's hierarchical in the sense -- in
18 the sense that I have the final authority to
19 approve or disapprove trades, and I've given her
20 the autonomy to do trades without my preapproval.

21 Q Okay. But it's the same -- it's the
22 same as the futures fund in the sense that you
23 always have the final say?

24 You don't need her permission to do
25 anything, but she does need your permission to do

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1 things?

2 A No, I have given her autonomy in terms
3 of executing trades at this point in time.

4 Q Correct. But you gave it to her. She
5 didn't give it to herself?

6 A Correct.

7 Q Right. Okay. That's what I mean.

8 A Okay.

9 BY MR. BENSON:

10 Q Who made the decision to disclose Ms.
11 Rios as a portfolio manager of the futures fund
12 and commodity fund?

13 A Disclose in what form?

14 Q Are you aware that Ms. Rios has ever
15 been disclosed publicly as a portfolio manager of
16 the futures fund or the commodity fund?

17 A Yes.

18 Q And in what format is Ms. Rios
19 disclosed publicly as the portfolio manager of
20 the futures fund and the commodity fund?

21 A She's in -- excuse me. She's on
22 various marketing materials that I've seen.

23 Q Okay. And what -- what do you mean by
24 "various marketing materials"?

25 A I've seen things called fact sheets.

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1 Q Okay.

2 A I mean, that's the -- that's the
3 primary one that I'm aware of.

4 Q How about a prospectus?

5 A Hedged futures prospectus?

6 Q Any prospectus.

7 A To my knowledge, she is not in the
8 hedged futures prospectus as the portfolio
9 manager.

10 Q How about the hedged commodity fund
11 prospectus?

12 A She is.

13 Q Okay. How about in annual reports to
14 shareholders?

15 A I don't recall. I mean, I'm not -- I'm
16 not certain.

17 Q I think you mentioned that you
18 participate in telephone calls with wholesalers,
19 correct?

20 A Yes.

21 Q Are you aware of Ms. Rios ever being
22 identified in those conversations or those calls
23 as being a portfolio manager of the futures or
24 commodity fund or --

25 A I believe so.

<p style="text-align: right;">Page 73</p> <p>1 Q You exchange e-mails with Ms. Rios, 2 right? 3 A Yes. 4 Q You've seen her signature block? 5 A Yes. 6 Q What does her signature block say? 7 A Currently it says portfolio manager of 8 the Hedged Commodity Strategy Fund. 9 Q And up until earlier this week, it also 10 identified herself as being the portfolio manager 11 of the futures fund, right? 12 A I think so. 13 Q Okay. So we've identified a number of 14 areas in which -- 15 A Sure. 16 Q -- she is disclosed -- she's disclosed 17 as a portfolio manager of the futures fund and 18 the commodity fund, right? 19 A Yes. 20 Q Okay. Who made the decision allowing 21 her, authorizing her to be so named? 22 A I am not aware if there was a formal 23 approval process or decision process. 24 Q Okay. 25 A I mean, typically it would be the</p>	<p style="text-align: right;">Page 75</p> <p>1 understanding is she's not in the futures fund 2 prospectus? 3 A Right, but I'm not certain of that. 4 MR. SCHMIDT: Okay. All right. Go 5 ahead. 6 BY MR. BENSON: 7 Q Do you understand what -- do you have 8 an understanding as to whether there are any 9 requirements as to who should be identified in a 10 prospectus as a portfolio manager? 11 A No. I'm not aware of those 12 requirements. 13 Q Okay. So you've never discussed with 14 anyone, for example, Item 9 of the prospectus to 15 be filed with the SEC? 16 A I don't know what specific item Item 9 17 is. 18 Q You've never discussed any of the 19 requirements of the SEC prospectus, right, with 20 regard to who needs to be identified as a 21 portfolio manager? 22 A I don't recall having those 23 discussions. 24 Q Okay. What is -- we'll start way 25 ahead.</p>
<p style="text-align: right;">Page 74</p> <p>1 advisor. 2 Q Okay. And do you know whether the 3 advisor made that decision in this case? 4 A I don't know, other than to say her 5 name is in the prospectus. I disclosed the 6 reason to the advisor for hiring her, which is to 7 have her serve as portfolio manager. 8 BY MR. SCHMIDT: 9 Q Let me just make sure we are clear. 10 When you say "advisor," you're referring to 11 Catalyst? 12 A Catalyst. Yeah. 13 Q Okay. I thought you just said that 14 she's not named as a PM in the futures fund 15 prospectus? 16 A I honestly don't recall -- 17 Q Okay. 18 A -- if she's named or not. 19 Q Okay. I'm just -- so you don't know? 20 You just -- 21 A Right. 22 Q -- you just said you thought she was in 23 the prospectus? 24 A No, I said I thought she wasn't. 25 Q Okay. So you think -- your</p>	<p style="text-align: right;">Page 76</p> <p>1 What is a portfolio manager of a '40 2 Act fund, in your mind? 3 A So, in my mind, it's the person or 4 persons who direct the trading activity of the 5 fund. 6 Q Okay. And is it your view that at all 7 times from the inception of Ms. Rios's 8 involvement with the commodity fund through today 9 that she has satisfied that definition of a 10 portfolio manager? 11 A Yes. 12 Q Okay. And how about with regard to the 13 futures fund? At what point, in your mind, did 14 she satisfy the definition of a portfolio 15 manager, if ever? 16 A Well, again, I am not -- I am not -- to 17 be honest, I'm simply not familiar with the 18 formal definition of what constitutes a portfolio 19 manager. So -- 20 Q Right. And I am just using your 21 definition. I agree with that. 22 A Sure. So by my definition, she has not 23 executed trades. She's recommended, suggested 24 trades. At times I have executed trades that 25 she's recommended.</p>

<p style="text-align: right;">Page 77</p> <p>1 So she was -- I -- to be honest, by my 2 definition, she's in a -- kind of a gray area. 3 She did lots of portfolio management -- she did 4 lots -- lots of things that I did before she was 5 hired. She did not go all the way to executing 6 trades for the -- for the fund, but she did do 7 everything but that in some way, shape, or form. 8 Q And do you recall ever having any 9 conversations with Catalyst as to whether Ms. 10 Rios should be identified as a portfolio manager 11 of the futures and/or commodity funds? 12 A No. 13 BY MR. SCHMIDT: 14 Q Given that, sort of your understanding 15 of what a portfolio manager is, did you have any 16 issue with Ms. Rios holding herself out as a 17 portfolio manager to investment advisors and 18 members of the public, given that she didn't meet 19 your definition of what a portfolio manager does? 20 A I felt like her participation in the 21 management of the fund was sufficient and a 22 sufficient level in terms of the activities she 23 performed to qualify for a definition like that. 24 Q Okay. So I just want to make sure I 25 have an answer to a question.</p>	<p style="text-align: right;">Page 79</p> <p>1 are talking like S&P futures contracts versus 2 commodities futures contracts, right? 3 A Correct. 4 Q Okay. Setting that aside, are there 5 differences in the trading strategy between the 6 futures fund and the commodity fund? 7 A At a -- at a high level, no. 8 Q Okay. Same put and call strategy that 9 we went over before? 10 A Very similar. 11 Q Very similar. Okay. 12 In your mind, are there material 13 differences between the trading strategies of the 14 two funds? 15 A No. 16 Q Okay. 17 MR. WASSERMAN: Jake, can I just 18 clarify one thing? 19 MR. SCHMIDT: Certainly. 20 MR. WASSERMAN: Does the commodity fund 21 trade options or futures? 22 THE WITNESS: Options. I think the 23 question was regarding what was the underlying 24 market. 25 MR. WASSERMAN: My fault.</p>
<p style="text-align: right;">Page 78</p> <p>1 A Sure. Sure. 2 Q You didn't have an issue with her 3 representing to investors and investment advisors 4 that she was a portfolio manager of the futures 5 funds? 6 A Yeah. I mean, all I can say is, again, 7 not my area of expertise to understand the 8 significance of that. 9 Q I'm just asking if you ever had an 10 issue with it. 11 Did that ever strike you as a problem, 12 an issue? 13 Did you ever talk to anybody about it, 14 or were you fine with her doing that? That's 15 what I want to know. 16 A No. No. I was fine with her doing 17 that. 18 Q Okay. Thank you. 19 Are there differences -- let's step 20 back. 21 The commodity fund, the underlying that 22 is traded is different than the futures fund; is 23 that fair? 24 A Correct. 25 Q Okay. Other than that, right, and we</p>	<p style="text-align: right;">Page 80</p> <p>1 BY MR. SCHMIDT: 2 Q Correct. That -- that's what I was 3 talking about. 4 Are the principal risks for the two 5 trading strategies the same or different? 6 A I would say they are primarily the 7 same. 8 Q Okay. Did you develop a separate set 9 of risk parameters for the commodity fund? 10 A Yes. 11 Q Did they look different than the risk 12 parameters for the futures fund? 13 A They -- they are similar but different 14 because of the -- the differences in markets and 15 the number of markets involved. 16 Q Okay. At a high level, do they attempt 17 to capture the same risk categories? 18 A Yes. 19 Q Okay. Is a -- and I'm gesturing 20 towards -- I think it's Exhibit 41. Is a report 21 like that, a daily report, generated for the 22 commodity fund as well? 23 A We -- we do generate a report. It's 24 not on this software. 25 Q Okay. What software is it on?</p>

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1 A A software, I think it's called Global
 2 Risk. I don't know if that's a brand name or --
 3 we refer to it as Global Risk.
 4 Q Do you get an e-mail every morning with
 5 the Global Risk report for the commodity fund?
 6 A I actually -- Kimberly gets an e-mail
 7 and I -- and populates a spreadsheet that I look
 8 at.
 9 Q What's the spreadsheet called?
 10 A NAV.
 11 Q So if you told her, give me the
 12 commodity fund NAV spreadsheet, that's what she
 13 would give you?
 14 A It's available to me on a common drive,
 15 to look at --
 16 Q Shared drive?
 17 A Shared drive.
 18 Q Okay. And do you know -- is there a
 19 subject name or something that comes up with this
 20 daily report e-mail that Ms. Rios gets from
 21 Global Risk?
 22 A I think it's called Global Risk.
 23 Q Okay.
 24 A I think.
 25 Q The two objectives of the funds, the

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1 futures fund and the commodity fund, are they
 2 essentially the same or different?
 3 A The -- the commodity fund has a
 4 slightly different objective. At least as stated
 5 in the prospectus has a different objective,
 6 largely due to our lack of experience with how it
 7 would perform.
 8 Q So what is the difference in the
 9 objective?
 10 A The difference in the objective is that
 11 the commodity fund -- or the hedged futures fund
 12 talks about capital preservation, and the
 13 commodity fund does not.
 14 Q Okay. Other than that, any differences
 15 in the objectives?
 16 A I don't recall. I don't recall any
 17 other differences.
 18 Q Yeah. Okay. And just -- this is not a
 19 memory test for you.
 20 A Sure.
 21 Q I'm just -- in your mind, when you
 22 think about the objectives of the two funds, is
 23 there a difference?
 24 That's all I'm asking about, not
 25 whether you can remember words --

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1 A Okay.
 2 Q -- used here or there. So I want your
 3 understanding.
 4 A No. Essentially, no.
 5 Q Okay. Other than the futures fund and
 6 the commodity fund, have you ever done any work
 7 or had any involvement with any other Catalyst
 8 fund?
 9 A No.
 10 Q Okay. Not the Macro Strategy Fund?
 11 A No.
 12 Q Not the time Value Trading Fund?
 13 A No.
 14 Q Okay. Since you've been -- you have
 15 been associated with Catalyst since -- what did
 16 we say? August 2013?
 17 A Yes.
 18 Q Okay. Since that time, do you know
 19 approximately how much you've been paid as
 20 portfolio manager for the futures fund and the
 21 commodity fund?
 22 A I don't have that number in the top of
 23 my head.
 24 Q Can you ballpark it for me?
 25 A Honestly, no.

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1 Q Okay. More than \$20 million?
 2 A Yes.
 3 Q More than \$30 million?
 4 A I think so.
 5 Q Okay. Would a good approximation be
 6 between 25 and \$35 million, somewhere in there?
 7 A Honestly, I don't know.
 8 (SEC Exhibit No. 120 was
 9 marked for identification.)
 10 Q Let me show you what's been marked as
 11 SEC Exhibit 120.
 12 Do you recognize this document?
 13 MR. ZILIAK: I apologize. Do you have
 14 a Bates number for this, please?
 15 MR. SCHMIDT: It did not get printed
 16 with a Bates. I can get it for you on a break.
 17 MR. ZILIAK: Okay. That's all I ask.
 18 MR. SCHMIDT: I will represent that
 19 these are all things that were produced to us in
 20 the context of this investigation.
 21 MR. ZILIAK: Okay.
 22 MR. SCHMIDT: Some of them printed with
 23 Bates, some of them didn't, but I can get it to
 24 you.
 25 MR. ZILIAK: Sure. I appreciate it.

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1 Thank you very much.
 2 I'm sorry. Could you repeat the
 3 question? I apologize. I interrupted.
 4 BY MR. SCHMIDT:
 5 Q The question was just do you recognize
 6 this document?
 7 MR. ZILIAK: Oh, great. Didn't miss
 8 much then. Sorry.
 9 THE WITNESS: I recognize the header.
 10 I don't -- maybe it's a formatting issue, but
 11 I've never seen it look quite like this before.
 12 BY MR. SCHMIDT:
 13 Q Okay. But you're aware that you got
 14 fund reconciliation e-mails monthly from people
 15 at Catalyst, right?
 16 A Yes. Yes.
 17 Q Okay. And the way you would read this
 18 document is you'd go all the way to the end,
 19 right? Which is -- sorry -- all the way -- the
 20 back page.
 21 A Yes.
 22 Q And it says "total net due to from
 23 Walczak," right?
 24 A Yes.
 25 Q And these are all positive numbers?

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1 A Yes.
 2 Q Right. So if we added those up, we
 3 could tell how much you were paid in the first
 4 ten months of 2016, right?
 5 A If that's what these are. I mean, they
 6 look right, sure.
 7 Q Okay. So, I mean, the e-mail is mid
 8 November 2016. It says "October fund
 9 reconciliation."
 10 A Okay.
 11 Q So in November, if you got a fund
 12 reconciliation, it would include every month up
 13 till the last full month, right?
 14 A Of October. Sure.
 15 Q Right. January through October?
 16 A Right.
 17 Q Okay. So these numbers -- is 20.4
 18 million. Does that sound right to you, first ten
 19 months of 2016?
 20 A Yes.
 21 Q Okay. So with that information, can
 22 you give a better estimate of what you think the
 23 total is that you got -- you earned as portfolio
 24 manager?
 25 I -- you were just having trouble

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1 before. I'm just giving you sort of a baseline --
 2 A Sure.
 3 Q -- to sort of go off of.
 4 A So --
 5 Q I am just asking if it helps.
 6 A It's more than \$20 million.
 7 Q Right.
 8 A Yeah. So, again, I'm -- we have
 9 records of these things if we are really
 10 interested in the answer.
 11 Top of my head, I don't pay -- I don't
 12 run around in the top of my head saying, here's
 13 how much money I made, so it's difficult.
 14 You said 25 to 35? I can't argue with
 15 that range of numbers. It may be more. It's
 16 probably not less.
 17 Q Yeah. And I'm just trying to get an
 18 understanding, and I was trying to help you
 19 out --
 20 A Sure.
 21 Q -- by that's a concrete number that I
 22 found. That's all.
 23 A Okay.
 24 Q So I'm just trying to see if that helps
 25 you with an estimation. It sounds like it

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1 doesn't. Is that fair?
 2 A Well, it does in that, like I said,
 3 I -- 25 to 35. Maybe more.
 4 Q Okay. Let me show you what's been
 5 marked as exhibit -- SEC Exhibit 108.
 6 (SEC Exhibit No. 108 was
 7 marked for identification.)
 8 BY MR. SCHMIDT:
 9 Q Do you recognize this document?
 10 A Yes.
 11 Q Can you tell me what it is?
 12 A It's a background questionnaire that I
 13 filled out.
 14 Q And this is the background
 15 questionnaire that you received in -- along with
 16 the subpoena for today, correct?
 17 A Correct.
 18 Q Okay. And did you complete this
 19 background questionnaire?
 20 A I did.
 21 Q Okay. And when you completed it, was
 22 everything in there true and correct?
 23 A To the best of my knowledge and
 24 recollection, yes.
 25 Q Okay. Does it remain true and correct,

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1 as you sit here today?
 2 A I haven't looked at it or thought about
 3 anything else that may have come up in the
 4 interim.
 5 Q Okay. Well, as we go through it, if
 6 you think something has changed since --
 7 A Okay.
 8 Q It looks like you filled it out
 9 approximately one month ago; is that correct?
 10 A Correct.
 11 Q Okay. If you think something in the
 12 last month has changed this, let us know.
 13 A Okay.
 14 Q All right. Can you flip to the second
 15 page?
 16 A Okay.
 17 Q So you have a list of e-mail accounts?
 18 A Yes.
 19 Q And the Ed -- sorry -- the ewalczak
 20 harborfinancialllc.com account?
 21 A Yes.
 22 Q You say it's a business account?
 23 A Yes.
 24 Q Did you ever communicate with anybody
 25 at Catalyst or Ms. Rios or anybody in your

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1 Wisconsin office on that account?
 2 A I don't believe so.
 3 Q Okay. Who were you communicating with
 4 on that account?
 5 A Clients of Harbor Financial, probably.
 6 Q None of whom have any overlap into the
 7 futures fund world or the commodity fund world?
 8 A There may be some who are shareholders
 9 of the hedged futures. There were at the
 10 conversion, but I haven't kept track of who still
 11 is or who isn't.
 12 Q Okay. I'm just trying to get a sense
 13 if you ever could have included information about
 14 the futures fund or the commodity fund when
 15 communicating on that e-mail account.
 16 A I don't think so. That e-mail account
 17 has been out of service for -- well, yeah. It
 18 looks like I put down 2015. That's about right.
 19 Q Do you still have access to it?
 20 A No.
 21 Q Do you have archived e-mails from that
 22 account?
 23 A I don't think so.
 24 BY MR. BENSON:
 25 Q Who was your Internet service provider

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1 who hosted that e-mail address?
 2 A I honestly don't know. I'm not
 3 technology sufficient in that way.
 4 Q Who helped you set it up?
 5 A I don't remember the name of the firm,
 6 but there was a firm that I wanted to set up a
 7 website. Never did get a website operating. It
 8 was harborfinancialllc.com, but the e-mail
 9 address came with it so I used it.
 10 Q Okay. You could figure that out,
 11 though, if we needed you to, right?
 12 A I might be able to.
 13 Q You paid them money for their services,
 14 I assume, right?
 15 A A long time ago.
 16 Q Okay. You mentioned that you had
 17 shareholders in the private fund, right?
 18 A (Nodding head.)
 19 Q Did you -- you would have communicated
 20 to them about the conversion of the fund from a
 21 private placement fund to a '40 Act, right?
 22 A Yes.
 23 Q And would you have used a
 24 harborfinancialllc.com e-mail to communicate that
 25 change, or how would you have communicated with

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1 them about that change?
 2 A I don't know. Likely
 3 harborfinancialllc.com.
 4 MR. BENSON: Okay. If you will put the
 5 request -- we'll follow up, Zach, about this, but
 6 if you could determine if that -- who was the ISP
 7 that hosted that e-mail address and any details
 8 about it.
 9 MR. ZILIAK: Sure.
 10 MR. BENSON: And relevant information.
 11 Great. Thank you.
 12 BY MR. SCHMIDT:
 13 Q You have LinkedIn and Twitter accounts
 14 there. Do you see that?
 15 A Yes.
 16 Q Okay. Do you ever use those
 17 applications for messaging?
 18 A No.
 19 Q Okay. Any other applications,
 20 Facebook, Instagram, anything else that you use
 21 to communicate with people on business matters?
 22 A No.
 23 Q Okay. Can you flip to Question 18,
 24 which is Page 5. Do you see that?
 25 A Yes.

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1 Q This question asks if -- if you are or
 2 ever have been an employee of, a broker dealer,
 3 investment advisor, investment company, municipal
 4 securities dealer, municipal advisor, transfer
 5 agent, or nationally recognized statistical
 6 rating organization.
 7 Do you see that?
 8 A Yes.
 9 Q You said no?
 10 A (Nodding head.)
 11 Q Okay. So does that mean you're not and
 12 have never been an employee of Catalyst?
 13 A As far as I recognize the definition of
 14 employee, no.
 15 Q Okay. So if you flip to the next page,
 16 you indicate that you are self-employed as a
 17 senior portfolio manager and that Catalyst is
 18 your client; is that correct?
 19 A Yes.
 20 Q What does that mean?
 21 A That means that I provide portfolio
 22 management services to now exclusively Catalyst.
 23 Prior to 2015, I had other clients.
 24 Q And your client contact at Catalyst is
 25 Jerry Szilagyi?

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1 A Yes.
 2 Q He is -- and for the entire time you
 3 have been associated with Catalyst, he's been the
 4 CEO of Catalyst?
 5 A Yes.
 6 Q Okay.
 7 25
 8 BY MR. BENSON:
 9 Q Just to follow up on that, so I believe
 10 you said that prior to 2015 you had other clients
 11 besides Catalyst; is that right?
 12 A Yes.
 13 Q So you were responsible for the
 14 strategy that was Harbor Assets and then
 15 converted to the futures fund in 2013, right?
 16 A Yes.
 17 Q Okay. So after the conversion of the
 18 futures fund in 2013, you continued to have other
 19 clients; is that right?
 20 A Yes.
 21 Q Okay. And who were those clients?
 22 Were they individuals? Were they funds? What
 23 were they?
 24 A They were some individuals, some --
 25 some funds, some entities.

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1 Q Okay. And did any of those other
 2 clients follow strategies that involved the
 3 trading of options and futures?
 4 A If you mean did I trade options on
 5 futures on their behalf?
 6 Q Yes.
 7 A Yes.
 8 Q Okay. And did you discuss that fact
 9 with Catalyst?
 10 A Yes.
 11 Q Okay. And what steps, if any, did you
 12 take to ensure that your trading among the
 13 totality of your clients, including the futures
 14 fund, did not present any conflicts or any
 15 situations where certain clients may be
 16 advantaged to the detriment of others?
 17 A I -- I remember having a long
 18 discussion with a compliance officer, and I
 19 provided him records of my trading activity. I'm
 20 trying to remember in what form and -- you know,
 21 that took.
 22 Catalyst was aware of the activity,
 23 and, as I said, I had a discussion with their
 24 compliance to ensure there didn't appear to be --
 25 or was, in fact, no conflict of interest.

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1 Q Okay. And who was that compliance
 2 officer?
 3 A Rob Glass.
 4 Q Okay. And you provided him with
 5 trading records?
 6 A I did. I don't recall exactly what
 7 format I sent those to him in. I had a
 8 conversation with Jerry Szilagyi about it as
 9 well.
 10 Q Okay. And did you disclose to all of
 11 your clients, including the futures fund, that
 12 you would be trading on behalf of more than one
 13 client at the same time?
 14 A I disclosed that to the advisor.
 15 Q Right. Not my question, though.
 16 A Right.
 17 Q So let's start kind of -- it will help
 18 me. Who are all of your clients from 2013 through
 19 2015? We know one of them was a futures fund,
 20 right?
 21 A Yes.
 22 Q Who else?
 23 A I have no recollection of individual
 24 names.
 25 Q How much assets under management did

<p style="text-align: right;">Page 97</p> <p>1 you have outside of the futures fund?</p> <p>2 A It -- it varied. I mean, it was</p> <p>3 somewhere maybe around \$10 million. Could have</p> <p>4 been less, could have been a little bit more, but</p> <p>5 that's ballpark.</p> <p>6 Q Okay. So let me get this straight.</p> <p>7 You were managing about \$10 million, and you</p> <p>8 don't remember whose money that was?</p> <p>9 A No.</p> <p>10 Q None. Okay.</p> <p>11 A I mean, I had -- I had probably, I</p> <p>12 don't know how many clients. I don't have their</p> <p>13 names memorized, especially from three or four</p> <p>14 years ago.</p> <p>15 Q One client? Or ten? Just trying to</p> <p>16 get a ballpark of how many clients you had at the</p> <p>17 time.</p> <p>18 A Again, I don't remember that number,</p> <p>19 but I -- I would guess that it was in excess of</p> <p>20 20.</p> <p>21 Q Okay. So -- so it's 20 -- August --</p> <p>22 let's say September 2013. You're managing the</p> <p>23 futures fund?</p> <p>24 A Um-hum.</p> <p>25 Q And then you also have possibly 20</p>	<p style="text-align: right;">Page 99</p> <p>1 A I don't recall what -- when in 2015. I</p> <p>2 know in 2015 is when I deregistered with the</p> <p>3 CFTC.</p> <p>4 Q Okay. And this is when you were</p> <p>5 registered as a CTA?</p> <p>6 A Yes.</p> <p>7 Q Okay. That's a question that I don't</p> <p>8 have to ask now, I think.</p> <p>9 A Okay.</p> <p>10 Q Okay. That's helpful.</p> <p>11 So you were registered as a CTA with</p> <p>12 regard to those SMAs.</p> <p>13 How did you document the advisory</p> <p>14 relationship with those clients?</p> <p>15 A With a disclosure document and POA</p> <p>16 documents executed by clients.</p> <p>17 Q Okay. And did you draft those</p> <p>18 disclosure documents and POAs, or did you have an</p> <p>19 attorney draft them?</p> <p>20 A I had somebody draft them. Actually I</p> <p>21 used a -- not an attorney, but I had a</p> <p>22 third-party person do that.</p> <p>23 Q Who was that third party?</p> <p>24 A A firm called Compliance Supervisors.</p> <p>25 Q Okay. And where is Compliance</p>
<p style="text-align: right;">Page 98</p> <p>1 other clients?</p> <p>2 And those other 20 clients represent</p> <p>3 about \$10 million in assets under management?</p> <p>4 A Yeah. Those are -- I'll say upfront</p> <p>5 both those numbers are complete wild guesses.</p> <p>6 Q Okay.</p> <p>7 A In fact, it's likely more than 20, as I</p> <p>8 think about my average account size. So yeah.</p> <p>9 Q Okay. And where did you custody those</p> <p>10 assets?</p> <p>11 A I didn't custody the assets. They were</p> <p>12 separately managed accounts.</p> <p>13 Q Okay.</p> <p>14 A POA.</p> <p>15 Q Okay. And I assume that -- would you</p> <p>16 generate account statements for those folks?</p> <p>17 A Yes.</p> <p>18 Q Okay. And you would charge fees --</p> <p>19 A Yes.</p> <p>20 Q -- for providing those services?</p> <p>21 A Yes.</p> <p>22 Q And this was as recently at 2013,</p> <p>23 right?</p> <p>24 A Yes.</p> <p>25 Q And that continued until when in 2015?</p>	<p style="text-align: right;">Page 100</p> <p>1 Supervisors based?</p> <p>2 A They are located in New Jersey.</p> <p>3 Q Okay. And was there a contact person</p> <p>4 at Compliance Supervisors in New Jersey that you</p> <p>5 communicated with?</p> <p>6 A Yes.</p> <p>7 Q Who was that?</p> <p>8 A Rob De Muria, D-e M-u-r-i-a.</p> <p>9 Q Okay. And in that disclosure document,</p> <p>10 do you recall whether you advised your -- advised</p> <p>11 your clients that, in addition to managing their</p> <p>12 separately managed accounts, you also would be</p> <p>13 managing other clients' separately managed</p> <p>14 accounts?</p> <p>15 A Yes.</p> <p>16 Q Okay. And in that disclosure document,</p> <p>17 did you also advise your advisory clients that</p> <p>18 you would -- in addition to managing their</p> <p>19 separately managed accounts, would also be acting</p> <p>20 as a portfolio manager to the futures fund?</p> <p>21 A I don't recall if that specific</p> <p>22 language was in there.</p> <p>23 Q Okay. And do you recall in the futures</p> <p>24 fund prospectus whether you -- or Catalyst --</p> <p>25 include any disclosure about outside business</p>

<p style="text-align: right;">Page 101</p> <p>1 activities and/or your management of separately 2 managed accounts? 3 A I believe so. 4 Q Okay. And what's the basis for that 5 belief? 6 A I -- again, not having read that 7 participate of the prospectus, my memory tells me 8 that at one point I did do that early on to 9 satisfy myself. 10 Q Okay. 11 BY MR. SCHMIDT: 12 Q You just mentioned a reference to 13 average account size. And based on your 14 understanding of average account size, you think 15 the number might be greater? 16 A (Nodding head.) 17 Q What is your understanding of the 18 average account size during that period of time? 19 A Somewhere close to a \$100,000 per 20 account. 21 Q And -- 22 BY MR. BENSON: 23 Q What was the compensation structure of 24 those accounts? 25 A It -- it varied. It was negotiable.</p>	<p style="text-align: right;">Page 103</p> <p>1 margin utilization. 2 Q Can you elaborate -- explain that more? 3 A Sure. Used -- generally used a higher 4 level of margin to equity in individual accounts 5 than I did in the mutual fund. 6 BY MR. SCHMIDT: 7 Q So if we go off the \$10 million number, 8 an average account size of a \$100,000, that's 9 more like a hundred clients than 20, right? 10 A Right. 11 Q Okay. Do you think that's a better 12 estimate? 13 A It's probably a better estimate. 14 Q Okay. You mentioned that you had both 15 individual and firm clients -- sorry -- fund 16 clients? 17 A We did have some entity clients. 18 Q What kind of entities? 19 A It wasn't my -- you know, even under 20 the know thy customer regulation, my 21 responsibility was to ensure that the entity 22 didn't -- either was properly registered with the 23 CFTC or didn't need to be, but beyond that, I 24 didn't have a full understanding of some of the 25 businesses.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q What was the range? 2 A Probably anywhere between 0 and 25, and 3 2 and 20. 4 Q And when you say -- and when you say 2 5 and 20, that would be a 2 percent management fee 6 and then a 20 percent take on profits over an 7 established high watermark, right? 8 A Correct. 9 MR. BENSON: Thank you. 10 MR. WASSERMAN: And what types of 11 assets did you invest for those individual 12 clients? 13 THE WITNESS: The same options on 14 futures that I do for the mutual fund. 15 BY MR. BENSON: 16 Q What strategy -- did you use the same 17 strategy for those individual clients as you did 18 for the hedged futures fund? 19 A Similar but tended to be more 20 aggressive. 21 Q You tended to be more aggressive in the 22 individual accounts? 23 A Yes. 24 Q How did that manifest itself? 25 A Different trades, different levels of</p>	<p style="text-align: right;">Page 104</p> <p>1 Q So you just knew that the name wasn't, 2 for example, John Smith but something L.L.C. or 3 incorporated -- 4 A Yeah. So -- so I would have a 5 questionnaire that would give me some insight 6 into the type of organization. Sometimes it 7 would be meaningful, sometimes not. And I would 8 do due diligence to ensure, again, Bylaw 1101 -- 9 that's your world. Probably not yours -- but 10 Bylaw 1101 to ensure whether or not the entity 11 needed to be registered. 12 Q Were you managing any funds other than 13 the futures fund during this period of time? 14 A No. 15 Q Okay. 16 BY MR. BENSON: 17 Q Before we move on, on Exhibit 108 in 18 response to Question 112 on Page 3, which asks, 19 "Have you ever been a defendant in any action 20 other than those listed in response to Questions 21 10 and/or 11," you responded no, correct? 22 A I'm sorry. Which -- there we go. Yes. 23 That's correct. 24 Q You're aware that a putative class 25 action has been filed against Catalyst Capital</p>

<p style="text-align: right;">Page 105</p> <p>1 Advisors in connection with the Hedged Futures 2 Strategy Fund, right? 3 A Yes. 4 Q Okay. And are you aware that you've 5 been named as a defendant in that action? 6 A Yes. 7 Q So am I correct that the response to 8 Question 12 on Page 3 of Exhibit 108 should 9 actually read yes, not no? 10 A Yes. 11 Q Yes, I am correct, right? 12 A Yes. 13 Q Okay. And are you aware of the status 14 of that matter? 15 A I'm aware that a complaint -- amended 16 complaint has been filed, but I haven't seen it 17 yet. 18 Q Great. Thank you. 19 A I apologize for that erroneous answer. 20 I guess I didn't think of it. 21 Q Just wanted to confirm that we've got 22 everything accurate. That's why I asked the 23 question. 24 A Yes. 25 BY MR. SCHMIDT:</p>	<p style="text-align: right;">Page 107</p> <p>1 Q -- to you and your wife? 2 A Yes, and certain expenses. 3 Q Okay. So that money goes in. It pays 4 expenses, and then it also pays salaries to you 5 and your wife? 6 A Yes. 7 Q And do you issue 1099s to yourself and 8 your wife regarding those payments? 9 A W-2s, actually. 10 Q W-2s. Okay. 11 BY MR. BENSON: 12 Q And what services do you provide to 13 Harbor Financial, L.L.C., in return for that 14 compensation that it pays you? 15 A Well, I'm an owner of the business. So 16 I'm -- my wife and I are owners of the business, 17 and we both participate in managing the business 18 in terms of paying bills, expenses that Harbor 19 Financial incurs. 20 BY MR. SCHMIDT: 21 Q I guess what we are trying to 22 understand is you could just have a checking 23 account, right? 24 A Right. 25 Q That you put money in and then you use</p>
<p style="text-align: right;">Page 106</p> <p>1 Q So have you described for us the total 2 activities of Harbor Financial, L.L.C., from 3 2000 -- mid 2013 to the present? 4 A Yes. 5 Q Okay. So other than managing or 6 advising those clients, it doesn't -- it did not 7 do anything else? 8 A Right. Well, currently I maintain that 9 entity to collect business expenses. And so, for 10 example, Harbor Financial pays for a number of 11 services that I use to assist me in what I do for 12 Catalyst. 13 Q Does anybody work for Harbor Financial? 14 A No. 15 All right. Let me amend that answer. 16 For tax purposes, my wife and I draw a salary 17 from Harbor Financial, but there are no employees 18 for -- in terms of actual activity. 19 Q How does Harbor Financial earn the 20 money to pay you and your wife? 21 A Harbor Financial -- I deposit a portion 22 of my income to Harbor Financial from Catalyst. 23 Q And then you use that portion of your 24 Catalyst income to then pay salaries -- 25 A Expenses.</p>	<p style="text-align: right;">Page 108</p> <p>1 it to pay bills? 2 A Yes. 3 Q So the utility bill, the rent for your 4 office space, whatever the bills are. Are those 5 the kind of bills you're talking about? 6 A Yes. 7 Q Okay. Instead of doing that, you have 8 a separate entity that you put money in and pay 9 bills out of, right? 10 A Yes. Right. 11 Q Other than putting money in and paying 12 bills out, what are the business activities of 13 Harbor Financial currently? 14 A Well, currently outside of -- Harbor 15 Financial is the entity that supports my 16 activity, my purchasing, research services, 17 renting office space. 18 Q I understand. 19 But other than paying those bills, what 20 does it do? 21 A That's what it does. 22 Q That's the sum total of what it does? 23 A Yes. 24 Q Okay. 25 BY MR. BENSON:</p>

<p style="text-align: right;">Page 109</p> <p>1 Q Is it fair to say that you've gotten 2 advice from an accountant or an attorney on that 3 structure? 4 A Yes. 5 BY MR. SCHMIDT: 6 Q Prior to -- 7 (Reporter interruption.) 8 BY MR. SCHMIDT: 9 Q Okay. So prior to the conversion of 10 the future fund, did the Harbor fund have a 11 private placement memo or similar document? 12 A Yes. 13 Q Okay. And who wrote that document? 14 A It, as you know, went through many 15 iterations in the life of the fund. So the most 16 recent iteration would have been done by Mr. De 17 Muria. 18 Q Okay. So let's step back to the 19 beginning. 20 A Right. 21 Q When was the PPM created for the Harbor 22 fund? 23 A I want to say in 2006. Maybe 2005. 24 Q Okay. About when you started trading? 25 A Right.</p>	<p style="text-align: right;">Page 111</p> <p>1 the trading strategy based on your expertise and 2 experience, they know what you tell them, right? 3 A Yes. 4 Q Okay. Other than you providing that 5 substantive content, is anybody else providing it 6 to the firm in New Jersey who's putting the PPM 7 together? 8 A No. 9 Q Okay. And how did you use that 10 document? 11 A Whenever an investor wanted to come 12 into the fund, that was provided to them. 13 Q Okay. And you mentioned that it was 14 revised at points over time? 15 A Yes. 16 Q Were you involved in those revisions? 17 A Yes. 18 Q Okay. If something substantively 19 changed regarding the trading strategy, the 20 objectives, or principal risk to that trading 21 strategy, are you the person updating that 22 section or providing the information to the 23 people in New Jersey to update that section? 24 A Yes. 25 Q Okay. What is your understanding about</p>
<p style="text-align: right;">Page 110</p> <p>1 Q Sorry. Other clients's money? 2 A Right. Right. Exactly. 3 Q And what was your involvement in the 4 drafting of that initial private placement memo? 5 A I described the strategy. That was 6 pretty much it. 7 Q Is it fair to say that you were 8 responsible for providing the substantive 9 content, and then somebody else put it in an 10 appropriate format? 11 A And -- and -- right. More than a 12 format. I would suggest that I depended on the 13 expertise of the individuals preparing it to -- 14 to prepare a document that was appropriate in 15 terms of risk disclosure, as well as strategy 16 description and to interact with the CFTC and FA 17 to -- to get it recognized. 18 Q Okay. But this firm in New Jersey, 19 they don't know what the strategy is other than 20 what you tell them, right? 21 A Correct. 22 Q Okay. And the objective of the fund, 23 they only know what you tell them? 24 A Correct. 25 Q Okay. And as to the principal risk of</p>	<p style="text-align: right;">Page 112</p> <p>1 whether the PPM needed to be truthful, accurate, 2 and complete? 3 A My best understanding would be that it 4 did need to be truthful, accurate, and complete. 5 Q Okay. So if the Harbor fund had three 6 principal risks to the trading strategy, is it 7 sufficient for you to describe one and leave out 8 the other two? 9 A Probably not. 10 Q I'm just asking your understanding. 11 A Sure. 12 Q Would that be okay or not okay? 13 A That would be not okay. 14 Q Okay. And who had ultimate 15 responsibility to determine whether or not the 16 PPM was truthful, accurate, and complete? 17 A I did. 18 Q And that also went for any revision to 19 it; is that correct? 20 A Yes. 21 Q Okay. Let me show you what's been 22 marked as Commission Exhibit 109. 23 (SEC Exhibit No. 109 was 24 marked for identification.) 25 BY MR. SCHMIDT:</p>

Page 113

1 Q Do you recognize that document?
 2 A Yes.
 3 Q Can you tell me what it is?
 4 A It looks like a fact sheet for the
 5 predecessor fund.
 6 Q Meaning the Harbor fund?
 7 A The Harbor fund. Sorry.
 8 Q Okay. And what's your understanding of
 9 what a fact sheet is?
 10 A It's a piece of marketing material that
 11 describes relevant attributes of the investment
 12 vehicle.
 13 Q Okay. And by "marketing material," you
 14 mean it goes to investors and prospective
 15 investors?
 16 A It can, yes.
 17 Q Did you give these or send these to
 18 investors, prospective investors, or advisors?
 19 A I did. I had no contact with advisors
 20 as a part of Harbor Assets, but I did, yes.
 21 Q Investors and prospective investors?
 22 A Yes.
 23 Q Okay. And I guess the same questions
 24 regarding the substantive content on these fact
 25 sheets during the Harbor fund phase, are you the

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1 person providing that substantive information?
 2 A Yes.
 3 Q And are these issued -- these fact
 4 sheets issued quarterly?
 5 A I didn't have a regular update protocol
 6 for these.
 7 Q Okay. Do you know how -- during the
 8 life of the fund preconversion, how many,
 9 approximately, you issued?
 10 A No.
 11 Q Okay. What is your understanding on
 12 whether the information on these facts sheets has
 13 to be true, accurate, and complete?
 14 A I believe it should be.
 15 Q Same understanding you have for the
 16 PPM?
 17 A Yes.
 18 Q Okay. What's the stated objective of
 19 the Harbor fund, according to this fact sheet?
 20 A Capital appreciation.
 21 Q Are you reading the first sentence on
 22 the top left?
 23 A Yes.
 24 Q Okay. Can you tell the date of this
 25 fact sheet?

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1 A It looks like March of 2013.
 2 Q So --
 3 A Perhaps April because March is -- this
 4 is performance.
 5 Q Okay. So you have the full performance
 6 numbers for the first quarter of 2013. So your
 7 best guess is sometime in April of 2013 is
 8 probably when this got created?
 9 A Yes.
 10 Q Okay. Can you think of any reason, if
 11 you had another full month of performance, that
 12 you wouldn't include it?
 13 A No.
 14 Q Okay. So it was your intention that
 15 the information on this form was true, accurate,
 16 and complete at the time it was completed and
 17 given to investors; is that correct?
 18 A That was my intention.
 19 Q Okay. I'm going to hand you what's
 20 been marked as Exhibit 133.
 21 (SEC Exhibit No. 133 was
 22 marked for identification.)
 23 BY MR. SCHMIDT:
 24 Q Do you recognize this document, Mr.
 25 Walczak?

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1 A I do.
 2 Q Okay. Can you please tell us what it
 3 is?
 4 A It looks to be the prospectus dated
 5 around the time of the conversion of the fund.
 6 Q The prospectus for the futures fund?
 7 A For the futures fund, yes.
 8 Q Okay. And it's dated August 29th,
 9 2013?
 10 A Yes.
 11 Q And does that seem to be right about
 12 the time when it converted from the Harbor fund
 13 to the futures fund?
 14 A Yes.
 15 Q Okay. Is it fair to say then that this
 16 is probably the initial prospectus for the
 17 futures fund?
 18 A That would be my guess.
 19 Q Okay. Do you remember a prospectus for
 20 the futures fund that would have Catalyst on it
 21 that would predate conversion to the futures
 22 fund?
 23 A No.
 24 Q Okay. That doesn't really make sense,
 25 does it?

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1 A No.
 2 Q Okay. So I want to know your role in
 3 drafting, reviewing, or approving sections of
 4 this document. So as we move forward, those are
 5 sort of the --
 6 A Sure.
 7 Q -- the big pictures that I'm trying to
 8 get a sense of.
 9 A Sure.
 10 Q Okay?
 11 So, first of all, big picture, did you
 12 have any role in drafting this document?
 13 A No.
 14 Q No role --
 15 A Well, if you mean role, I provided
 16 Catalyst with materials, like probably this
 17 latest document, my most recent PPM, but I had no
 18 role in putting this document together, other
 19 than to provide them that input.
 20 Q Okay. So let's start there then.
 21 It sounds like you're not actually
 22 sitting down at the computer and drafting
 23 language?
 24 A Right.
 25 Q And you're not dictating language that

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1 somebody else is typing into a computer?
 2 A Correct.
 3 Q But in advance of the creation of
 4 Exhibit 133, somebody at Catalyst asked you for
 5 written material to help them create this
 6 document?
 7 A Yes.
 8 Q Who is that person?
 9 A I don't remember exactly who.
 10 Q Okay. And --
 11 BY MR. BENSON: Was it a man or a
 12 woman?
 13 THE WITNESS: I don't remember that.
 14 BY MR. SCHMIDT:
 15 Q What did you provide?
 16 A My best recollection is I provided my
 17 most recent PPM.
 18 Q Did you provide any of the fact sheets?
 19 A I think so.
 20 Q And would you have sent those via
 21 e-mail?
 22 A Yes.
 23 Q Can you think of anything else you
 24 provided other than the PPM, most recent PPM, and
 25 the fact sheets?

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1 A No.
 2 Q How often did you update the PPM?
 3 Again, this is the PPM for the Harbor fund,
 4 correct?
 5 A Right.
 6 Q Okay. So how often did you update that
 7 PPM?
 8 A Roughly once a year. The requirement
 9 was nine months. I wasn't very active in
 10 soliciting new investors. So there were times
 11 when I let it go past the update period. So
 12 roughly once a year.
 13 Q Did you have a time of year when you
 14 did that? Like January or --
 15 A Whenever it came due, as I said, and
 16 most of the time there -- there were not
 17 investors that -- you know, where it was critical
 18 so sometimes I let time lapse.
 19 Q Okay. Did you -- either before or
 20 after you sent the written material to Catalyst
 21 to help draft this document, did you have either
 22 in-person or on-the-phone discussions about what
 23 should be included in this document, meaning the
 24 prospectus that is Exhibit 133?
 25 A No.

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1 Q No discussions at all?
 2 A Not that I recall.
 3 Q Okay. Do you recall ever getting any
 4 section of the prospectus, either -- either the
 5 whole thing or parts of it, sent to you in e-mail
 6 or some other form for you to look at and okay or
 7 approve?
 8 A Yes.
 9 Q Okay. So at this point, have you
 10 described to us your entire role in drafting any
 11 portion of this document?
 12 A Everything I remember.
 13 Q Okay. So let's talk about your role in
 14 reviewing the language in this document. Did you
 15 review any part of this before it was finalized?
 16 A I do remember getting parts of it sent
 17 to me for review.
 18 What I recall is that my review was of
 19 the investment strategy description.
 20 Q Okay. Who sent it to you to review?
 21 A I don't know that.
 22 Q Okay. And your understanding is the
 23 investment strategies section is the one that you
 24 were supposed to review?
 25 A That's the -- that's the one I recall.

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1 Q And do you recall being directed to
2 review that or that is what you chose to review?
3 A No. I recall being asked to look at
4 the parts that I could -- that I was qualified to
5 comment on, meaning does this accurately describe
6 your strategy, and that's what I reviewed.
7 Q So that's what I'm trying to get a sense
8 of. Is it a request from Catalyst: Review this
9 document for the parts that you think you have
10 knowledge of? Or was it: You have knowledge of
11 the strategy; review the strategy part?
12 Do you understand the difference?
13 A Well, let me describe what I recall
14 happening. I recall getting an e-mail from
15 somebody at Catalyst --
16 Q Okay.
17 A -- with a portion of this document,
18 which I recall to be the investment strategy,
19 saying does this accurately describe what you do.
20 Q Okay. So you don't recall getting a
21 draft of the entire thing and being asked to
22 review it?
23 A Not before it went out, no.
24 Q Okay.
25 MR. BENSON: Did that surprise you?

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1 THE WITNESS: No.
2 BY MR. SCHMIDT:
3 Q Why not?
4 A Because I have no expertise in
5 prospectus preparation in the '40 Act vehicle.
6 BY MR. BENSON:
7 Q Don't you have expertise as to what the
8 strategy is --
9 A Sure.
10 Q -- and what the risks are, and what the
11 objectives are?
12 A Yes.
13 Q Who had more expertise than you do as
14 of August 29th, 2013, regarding those issues?
15 A No one.
16 Q And with that being said, you weren't
17 surprised that you were asked -- you were not
18 surprised that this went out without you having
19 to review the entirety of it for accuracy and
20 approval?
21 A No.
22 Q Why not?
23 A Because I'm not an attorney. I have no
24 expertise in what sorts of disclosures are
25 appropriate in the '40 Act vehicle.

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1 Q Does that seem like a prudent practice,
2 sitting here today?
3 A I have no basis to comment. I mean --
4 Q Um-hum. That's fine.
5 BY MR. SCHMIDT:
6 Q At some point, this document was
7 finalized, correct?
8 A Yes.
9 Q And it was issued.
10 Other than reviewing the principal
11 trading strategy section that you recall being
12 asked to review, were you asked to give approval
13 to any section or to the prospectus in its
14 entirety before it went out?
15 A No.
16 Q Okay. Do you know who at Catalyst
17 drafted this document?
18 A No.
19 Q Do you know anybody at Catalyst who
20 reviewed this document before it was issued?
21 A No.
22 Q Do you know anyone at Catalyst who's
23 responsible for approving this document before it
24 got issued?
25 A No.

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1 Q Can you give me your best guess, based
2 on your -- your experience with Catalyst now
3 stretches about five years?
4 A Four and a half. Yeah. Sure.
5 Q Four and a half. Okay.
6 Based on that experience, if you had to
7 take your best as to who was responsible for
8 putting this document together, who would it be?
9 A Maybe Joanne Strasser. Maybe --
10 Q And who --
11 A That's a name. I don't know.
12 Q Who is Ms. Strasser -- could you spell
13 it, please.
14 A S-t-r-a-s-s-e-r.
15 Q Who is Ms. Strasser?
16 A I'm not certain of her role.
17 Q Okay. Based on your experience with
18 Catalyst over the last four and a half years,
19 what is your best guess as to who would give
20 final approval for this document before it gets
21 issued?
22 A To be honest, I have no idea. I am not
23 all familiar with the process by which this
24 document is prepared or what approvals are given,
25 or how it's distributed. Not my area of company.

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1 Not my area of interest.

2 My interest is in ensuring that I
3 comply with it, but in terms of who writes it,
4 approves it, distributes it, I'm not involved in
5 that.

6 Q Yeah. I'm just trying to understand
7 what your best would be, right? I mean, there's
8 certain things that happen in this building --

9 A Right.

10 Q -- that I have no idea --

11 A Right.

12 Q -- who does it, but I have a guess if I
13 had to guess. And I am just trying to see if you
14 would know.

15 Like you said Ms. Strasser. Who do you
16 think gives approval for these things?

17 A I honestly don't know.

18 Q Okay. Does this prospectus 133, that's
19 dated August 29th, 2013, was it ever revised at
20 any point?

21 A I believe so.

22 Q Why do you believe so?

23 A Because I think there's -- well, I know
24 there's a prospectus with a later date on it.

25 Q Okay. So it has been revised?

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1 A Yes.

2 Q Okay. Were you ever involved in the
3 process of --

4 A The point being it has a later date,
5 but I have no idea if there's differences that I
6 didn't notice when I reviewed it.

7 So in terms of whether it was revised,
8 updated, what, that I don't know.

9 Q Okay. At some point, versions of this
10 prospectus appeared with other dates, right?

11 A Yes. Yes.

12 Q And you're saying you know those
13 documents exist. You don't know exactly whether
14 any changes have been made?

15 A Correct.

16 Q Okay. Did you have any role in either
17 the drafting, review, or approval of those
18 revisions of the prospectus?

19 A I recall being asked, subsequent to the
20 initial prospectus, to take a look again at the
21 investment strategy and make sure that it
22 correctly reflected what I was doing.

23 Q When?

24 A Don't know. I just know it happened.

25 Q Okay. So we are sitting in early 2018.

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1 The initial one is mid 2013?

2 A Right.

3 Q In the last year? In the last two
4 years? When were you asked to do this?

5 A I honestly have no idea.

6 Q You don't know if it was within the
7 last year?

8 A No, I don't.

9 Q Okay.

10 BY MR. BENSON:

11 Q Just to be clear, does that mean that
12 it could have been in the last year?

13 A Well, I don't know whether it was or it
14 wasn't so...

15 Q Right. But that's what I am asking to
16 clarify, because some people -- I want to make
17 sure I understand.

18 You have no idea if it was two weeks
19 ago or if it was four years ago?

20 A Correct.

21 Q You have no idea?

22 A Correct.

23 Q You weren't asked to look at -- you
24 weren't asked that question yesterday, were you?
25 You weren't asked to make -- to review any

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1 prospectuses yesterday, for instance, right?

2 A Right.

3 Q Okay. So you know it wasn't yesterday?

4 A Yeah.

5 Q But anything beyond yesterday, you have
6 no idea?

7 A Not with any certainty. I mean, all
8 right.

9 Q Not looking for certainty. I'm looking
10 for best guess.

11 A Yeah. Okay. Well, no, I can't even
12 tell you if perhaps -- no. I'm being very
13 honest. I just don't know.

14 Q And that's fine. I'm not --

15 A Yeah.

16 Q I'm not questioning your integrity or
17 your honesty.

18 I just want to make sure that we have
19 exhausted your memory as to when you were asked
20 to review revisions to the prospectus. That's
21 all I want. Okay?

22 A Okay.

23 BY MR. SCHMIDT:

24 Q Do you remember this happening once or
25 more than once?

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1 And by "this," I mean asked to review a
2 revision of the prospectus.

3 A What I'm trying to sort through in my
4 mind is there are also times when I'm asked to
5 take a look at the fact sheet.

6 Q We'll get to those.

7 A Right. But what I mean is, when I
8 think about reviewing documents, these are not
9 things that stand out in my mind as memorable
10 life events.

11 This is not the reason I'm in this
12 business.

13 So I review these from -- you know, to
14 ensure that I remain in compliance with the
15 prospectus, but in terms of review cycles, just
16 not something I do or I'm -- have any interest
17 in, to be honest.

18 Q But they are very different documents.

19 The prospectus is a -- is a multi-page
20 document. A fact sheet is a front and back --

21 A Sure.

22 Q -- right? Is that correct?

23 A Yes. Absolutely.

24 Q Okay. So at least once you've been
25 asked to review your principal trading strategy

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1 section for a revision of the prospectus?

2 A Yes. And -- and further to your
3 question about the fact sheet versus prospectus,
4 very similar -- this is a multi-page document.
5 I'm not asked to review the multi-page document.

6 I'm asked to review a trading strategy,
7 which is of very similar length to what's
8 described in the fact sheet.

9 Q Okay. In your entire experience with
10 Catalyst, can you remember being asked to review
11 any language for a fact sheet or a prospectus
12 other than principal trading strategy?

13 A Not that I recall, no.

14 MR. SHANK: And whether at any point
15 prior to February of 2017 you were asked to
16 review the principal trading strategy language?

17 THE WITNESS: Prior to February of
18 2017? Yes. I'm -- I'm relatively certain that
19 what reviews I did were earlier rather than later
20 in the life of the fund.

21 MR. SHANK: Okay. Thank you.

22 BY MR. SCHMIDT:

23 Q I apologize if I asked this. I don't
24 think I have.

25 What is your understanding as to

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1 whether the prospectus has to be true, accurate,
2 and complete when it's issued?

3 A Certainly as an investor, I believe it
4 does.

5 Q It does have to be true, accurate, and
6 complete?

7 A Yes.

8 Q Same rules would apply to the fact
9 sheet?

10 A Yes.

11 Q Okay. So can you flip to Page 6 of
12 this SEC Exhibit 133, please?

13 A I'm sorry. Page 6, did you say?

14 Q Yeah. So at the bottom in the middle,
15 there's a page number.

16 A Right.

17 Q That's what I'm looking at.

18 So you see that it describes the
19 advisor as Catalyst, correct?

20 A Yes.

21 Q Okay. And it describes you, Edward S.
22 Walczak -- that's you, right?

23 A Yes.

24 Q As a portfolio manager of Catalyst. Do
25 you see that?

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1 A Yes.

2 Q Do you think that is an accurate
3 description of your relationship between you,
4 Catalyst, and the futures fund?

5 A I do manage this fund on behalf of the
6 advisor.

7 Q Do you believe you're a portfolio
8 manager of Catalyst?

9 A I'm not an employee of Catalyst. So
10 that's what caused me doubt in terms of --

11 Q And that's what I'm trying to
12 understand, right?

13 A Right.

14 Q Before you described yourself as
15 self-employed with Catalyst as your client?

16 A Yes.

17 Q Okay. To me that doesn't sound
18 consistent with you being a portfolio manager of
19 Catalyst.

20 Do you have a reason why that's
21 consistent, in your mind?

22 A Well, because I serve -- you know, my
23 agreement with Catalyst notwithstanding, I serve
24 as portfolio manager of one of their funds. So
25 could this language be correct? Sure. I'm not

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1 an attorney. I don't know whether someone would
2 take issue with this -- you know, prospectus like
3 this?

4 Q Okay. I realize you're not an
5 attorney. I don't want to get you to opine upon
6 legal matters.

7 A Right.

8 Q I'm just -- in your mind, you were
9 self-employed as a portfolio manager. Catalyst
10 is one of your clients. And the work -- the
11 services you provide to that client are to manage
12 the futures funds; is that --

13 A Yes. That's correct.

14 Q Okay. That's what I wanted to get at.

15 When Harbor converted to the futures
16 fund, did the principal trading strategy change?

17 A It changed only in -- to the extent
18 that it -- it has evolved since being the fund.
19 So the principal trading strategy did not change
20 at conversion.

21 Is it identical to what I was doing in
22 2008? No, not identical. But it's consistent
23 with the improvements that I made throughout the
24 strategy when it was Harbor and, again, continued
25 in the mutual fund form.

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1 Q Okay. So I want to set aside evolution
2 that's occurred gradually over time.

3 A Right.

4 Q Okay. So you had mentioned what I do
5 now and what happened in 2008.

6 I'm focused on the conversion in mid
7 2013.

8 A Okay.

9 Q Okay. So at that point, did you step
10 back and say, I'm changing the principal trading
11 strategy, I used to do this, I'm now doing this?

12 A No.

13 Q Okay. So that sort of just continued.
14 And I realize that today you might be doing
15 something that has evolved from where you started
16 in 2007.

17 A Yes.

18 Q But that's not the question.

19 Do you understand the difference?

20 A Yes.

21 Q Okay. So the answer is no?

22 A No.

23 Q Okay. And so the principal risks of
24 your trading strategy, would that have been the
25 same with the Harbor fund as it existed in 2013,

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1 the first participate of 2013, and the futures
2 fund as it existed in the second half of 2013?

3 A Certainly by category and by type of
4 risk, whether, you know -- and, again, how that
5 gets described in the prospectus --

6 Q Okay. So step back. I am not asking
7 you to describe or remember what's in the
8 prospectus.

9 A Right.

10 Q You're the portfolio manager?

11 A Right.

12 Q You're the only portfolio manager?

13 A Right.

14 Q Right?

15 You're the person -- and that's why
16 they are asking you to review the principal
17 trading strategy section, correct?

18 A Right. Right.

19 Q Okay. You're the guy who knows what
20 happening with this fund?

21 A Yes.

22 Q How it's being managed?

23 A Yes.

24 Q Okay. So what I'm asking you is:
25 Preconversion, right, you're executing a

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1 principal trading strategy. And post-conversion,
2 you're executing the same principal trading
3 strategy, but I guess the legal structure of the
4 fund has changed?

5 A Yes.

6 Q Okay. But you're operating the same
7 principal trading strategy?

8 A Yes.

9 Q So what I'm asking is: The principal
10 risks that face the Harbor fund, say, in July of
11 2013, are they materially different than the
12 principal risk of the trading strategy to the
13 futures fund in September of 2013?

14 A What kind of risks are called principal
15 risks?

16 Q You, as the portfolio manager --

17 A The reason -- the reason I make that
18 difference is, from a trading standpoint, I would
19 answer the question yes.

20 Q Yes, the material risks have changed?

21 A That they have not changed.

22 Q Oh, they have not changed?

23 A Right.

24 Q Okay.

25 A Now, in a -- in a different format, I

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1 believe there are different risks in a mutual
2 fund format than there are in a private placement
3 format, or there could be.

4 BY MR. BENSON:

5 Q Could you give us examples?

6 A I can only imagine that there is a
7 different set of risks around daily liquidity
8 requirements, where assets are held, things like
9 that.

10 Q So if I'm understanding you correctly,
11 the risks that you are thinking of, those are
12 regulatory risks that relate to the legal
13 structure, not to the actual trading -- trading
14 of the funds?

15 A Correct. I would -- I would say
16 principal risks associated with the trading
17 activity of the fund remain the same pre and
18 post-conversion.

19 BY MR. SCHMIDT:

20 Q Yeah. Okay. So that's a good
21 clarification.

22 So setting aside any sort of
23 regulations or requirements that adhere to the
24 legal structure, your understanding is it's the
25 same?

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1 A Yes.

2 Q And what is the same is the principal
3 of risks to the trading strategy, right? I am
4 sorry. I just said "it's the same." I just wanted
5 to define "it."

6 A Oh. Okay.

7 Q Is the principal risk to the trading
8 strategy, right?

9 A Yes.

10 Q Okay. And then finally, pre and
11 post-conversion, is the objective of the trading
12 strategy the same from the Harbor fund to the
13 futures fund?

14 A Excuse me.

15 The objective was stated differently,
16 but I believe it to be materially the same.

17 Q And how is the objective stated
18 differently?

19 A The word "capital preservation" was
20 added in the '40 Act -- in the '40 Act vehicle
21 compared to the predecessor Harbor vehicle.

22 Q Did you add the phrase "capital
23 preservation" to the description of the objective
24 for the futures fund?

25 A I did not.

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1 Q Who did?

2 A I don't know.

3 Q Did anybody come to you and say: Is
4 this an accurate description of the objective,
5 since you're the portfolio manager?

6 A I don't recall being asked that
7 specifically.

8 Q So when you're responsible for doing
9 the PPM for the Harbor fund, you describe the
10 objective of your trading strategy as capital
11 appreciation?

12 A Yes.

13 Q It gets converted -- it, the -- the
14 Harbor fund gets converted to the futures fund in
15 mid 2013, correct?

16 A Yes.

17 Q And the objective is then changed to
18 capital appreciation and capital preservation in
19 all market conditions, correct?

20 A Yes.

21 Q And nobody asked you for your input,
22 review, or approval of that change when it
23 happened?

24 A No one asked for my approval other than
25 to ask me if this was still a reasonable

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1 description, this -- some of the language was
2 changed, that being one of them, whether this was
3 still a description of -- an accurate description
4 of the strategy.

5 Q Okay. So let's walk back because
6 before -- I'm not talking about the -- I'm
7 talking about the objectives.

8 So before you told me that you were
9 asked to review the principal trading strategy.

10 Were you also asked to review the
11 objectives of that trading strategy?

12 A I don't know if that was a part of it,
13 but probably.

14 In other words, I don't recall if the
15 document -- the document I recall looking at was
16 a description of what I do.

17 I believe it led off with the
18 investment objective. So that would have been
19 something I looked at certainly.

20 Q And somebody wrote that before they
21 gave it to you?

22 A Yes.

23 Q And whoever that person is inserted
24 this capital preservation language?

25 A Yes.

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1 Q Did they talk to you about it before
2 they inserted that language?
3 A No.
4 Q Did you have a discussion of why that
5 language is there?
6 A No.
7 Q Why not?
8 A That objective, in my mind, was also
9 present in the Harbor fund, as I understand the
10 meaning of the word.
11 Q Can you think of any prospectus,
12 revision of a prospectus, or a fact sheet for the
13 Harbor fund that contains that phrase?
14 A No.
15 Q Why -- why wouldn't it be there if that
16 is an objective of the Harbor fund?
17 A I elected not to state it. In -- in --
18 in many ways, in my mind, capital preservation is
19 part of any strategy. It's -- it's almost
20 redundant to state it. I happened not to use
21 that language.
22 Q You told me that your understanding of
23 your obligations with respect to the PPMs and the
24 fact sheets for the Harbor fund was that they had
25 to be true, accurate, and complete, right?

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1 A Yes.
2 Q And now you're telling me that there
3 was an objective that was left unstated in all
4 those documents, correct?
5 A No.
6 Q Okay. So where is capital
7 preservation -- we can look at them.
8 A Sure.
9 Q Okay.
10 A I felt like it -- in my preparation of
11 the Harbor documents, I felt like that, among
12 other things, would be self-evident.
13 Q Something that is self-evident doesn't
14 mean that it's stated, right?
15 A Well, again, in my mind, in preparing
16 the Harbor documents, I didn't feel it was
17 descriptive or necessary to a prospective
18 investor to use that particular language. That's
19 all.
20 Q So the answer is it doesn't appear in
21 the PPM, the revision to the PPMs, or the fact
22 sheets for the Harbor fund, right?
23 A I don't believe it does.
24 Q Okay.
25 25

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1 BY MR. BENSON:
2 Q So if I can, is it your testimony that
3 it was not necessary to reference capital
4 preservation in the PPMs for the Harbor funds?
5 A I didn't find it necessary, no.
6 Q Right. Okay. And you were aware that,
7 with regard to the futures fund, there now is
8 going to be a reference of capital preservations
9 in the principal investment objectives, right?
10 A Yes.
11 Q Did you raise your hand and say, guys
12 this wasn't necessary before; why is it necessary
13 now?
14 A No.
15 Q Then why was it necessary?
16 A I don't know. I had no reason to
17 object to it.
18 Q You didn't even ask any questions,
19 though, it sounds like?
20 A Right. Why would I?
21 Q Because you're the architect of the
22 trading strategy. Don't you want to make sure
23 that it's described accurately?
24 A Yes, and I didn't have any objections
25 to the inclusion of that word.

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1 Q Okay.
2 MR. WASSERMAN: Can I ask some
3 questions?
4 MR. BENSON: Mm-hmm.
5 BY MR. WASSERMAN:
6 Q Mr. Walczak, you testified before that
7 the trading strategy has remained the same
8 throughout -- at least 2008 through the present?
9 A Yes.
10 Q And there are risks involved in that
11 trading strategy, correct?
12 A Yes.
13 Q And in particular one of those risks is
14 when the market is rising rapidly the fund does
15 not perform well, correct?
16 A It may not perform well.
17 Q Can you clarify your answer?
18 A Sure. When the market is rising
19 rapidly, that's a condition that can lead to
20 underperformance by the fund.
21 Q If you were engaged in the call option
22 strategy, will the market perform poorly in a
23 rapidly rising market? I'm sorry. Will the
24 portfolio perform poorly in a rapidly rising
25 market?

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1 A Again, it can.
 2 Q Well, under what circumstances would it
 3 not?
 4 A If the fund position -- the fund
 5 positions remained below where the market rose.
 6 Q As participate of the strategy, when
 7 you were putting out the call option positions --
 8 A Yes.
 9 Q -- generally, how far above the market
 10 did you place your long-call option position?
 11 A It was completely dependent on market
 12 conditions at the time. There was no set
 13 standard for how far away.
 14 Q But it wasn't like ten percent above
 15 the market, right?
 16 A Sometimes.
 17 Q Sometimes it was ten percent above the
 18 market when you placed it?
 19 A Yes.
 20 Q In practice from the fund's inception
 21 to the present, when the market rises rapidly,
 22 the fund generally does tend to perform poorly,
 23 correct?
 24 A That's been an overall experience, yes.
 25 Q Okay. So is a fair generalization

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1 that, in a rapidly rising market -- and I think
 2 you've said this on various calls and various
 3 e-mails. It's a fair characterization to say that
 4 in a rapidly rising market, the fund doesn't
 5 perform well, right?
 6 A Yeah. Again, that's - it depends on
 7 the particular situation, but that's generally a
 8 true statement that we -- we talk about in
 9 participate of the strategy.
 10 Q And you say -- and I'm looking at
 11 Exhibit 109. You say the fund seeks to achieve
 12 capital appreciation by trading options and
 13 options on stock index features.
 14 THE REPORTER: On what and what?
 15 MR. WASSERMAN: On stock index
 16 features.
 17 BY MR. WASSERMAN:
 18 Q The capital appreciates -- I'll strike
 19 that question actually.
 20 If you're engaged in the call option
 21 strategy, you have a sweet spot?
 22 A Yes.
 23 Q Between your long option and your short
 24 option or your long options and your short
 25 options in which capital does, in fact,

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1 appreciate, right?
 2 A You can earn a profit, yes.
 3 Q Okay. And in your put strategy,
 4 there's a particular range of market movement in
 5 which capital does appreciate for the fund,
 6 right?
 7 A The put option strategy is based on
 8 volatility. Not really on price.
 9 Q So there's a specific volatility
 10 performance in -- volatility scenarios in which
 11 the capital would appreciate, right?
 12 A Yes.
 13 Q And like all -- like most strategies,
 14 they have a risk reward where, in order to -- for
 15 capital to appreciate in certain circumstances,
 16 capital is not going to appreciate in other
 17 circumstances, correct?
 18 A Yes.
 19 Q And that's -- that informed your
 20 drafting of this Exhibit 109, correct?
 21 A Yes.
 22 Q And then as we've discussed, that
 23 investment objective, in 109, was revised to
 24 include not just capital preservation but, quote,
 25 capital preservation in all market conditions,

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1 correct?
 2 A Yes.
 3 Q And because of the nature of the
 4 strategy that we've just discussed, you didn't
 5 include that language in Exhibit 109, right?
 6 It wouldn't have been accurate to say,
 7 in light of what we've just discussed, that
 8 capital is preserved in all market conditions?
 9 A That's certainly our objective.
 10 Q But as we just discussed, there are
 11 certain market conditions in which the fund
 12 performs poorly, correct?
 13 A Well, poorly means it performs -- the
 14 opportunity under those market conditions is
 15 generally less than the opportunity under
 16 different market conditions.
 17 There's no -- there's nothing set in
 18 stone that says that the fund will perform poorly
 19 in a rapidly rising market.
 20 That is a risk, and it's been the
 21 fund's experience that those markets are more
 22 difficult, but there is no -- nothing cast in
 23 stone that says the fund will perform poorly.
 24 Q But you've told advisors and investors
 25 before that the fund performs poorly in rapidly

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1 rising markets, right?

2 A I've told them that there is a greater
3 risk in a rapidly rising market and the fund has
4 a -- has the risk of performing poorly in those
5 environments.

6 Q Are you certain that when you made
7 those statements that you phrased it that way and
8 not more directly, that the fund performs poorly
9 in rapidly rising markets?

10 A I obviously don't recall specific
11 conversations.

12 Q Because as we've discussed a few
13 minutes ago, the fund generally does perform
14 poorly in rapidly rising markets, right?

15 A It has in the past.

16 MR. BENSON: Have you ever described a
17 rapidly rising market as the worst market
18 environment for this strategy?

19 THE WITNESS: I believe so. That
20 wouldn't be unusual.

21 BY MR. WASSERMAN:

22 Q So to get to my original -- or one of
23 my earlier questions, there are certain market
24 conditions in which the fund does not perform
25 well?

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1 A There are certain market conditions in
2 which the fund has a -- less of an opportunity to
3 earn money.

4 There is no guarantee that the fund
5 performs poorly in a rapidly rising market. It
6 is very possible for the fund to perform well in
7 a rapidly rising market.

8 Q But you've told -- but you've told
9 advisors and investors that a rapidly rising
10 market is the worst possible situation for the
11 fund, correct?

12 A Yes.

13 Q So there are certain market conditions
14 in which the fund does not perform well?

15 MR. ZILIAK: Sorry. This has been
16 asked and answered a few times by now.

17 THE WITNESS: There's a difference
18 between, here's a market environment, fund
19 performs poorly, and here's a market environment
20 that is more difficult for the fund to perform
21 well.

22 BY MR. WASSERMAN:

23 Q So how would you think the advisors and
24 investors interpreted your phrase, "worst
25 environment for the fund"?

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1 A I can't speculate on how they
2 interpreted that.

3 I know what my intent was, and I
4 attempted to clarify it in each description.

5 1 MR. SCHMIDT: So to be
6 clear, your intent when you say, a rapidly rising
7 market is the worst possible market environment
8 for the fund means that the fund may not earn as
9 much money as in other markets but still going to
10 earn money?

11 THE WITNESS: It still has the same --
12 it has a less of an opportunity to earn money.
13 In all market environments, there's a risk and
14 there's an opportunity. In that environment, the
15 opportunity is more difficult to earn money.
16 There's no -- there's nothing that says a rapidly
17 rising market will definitely cause a loss.
18 There's nothing that says that a rapidly rising
19 market will prevent the fund from making money.
20 It's more difficult to do so in this environment.

21 BY MR. WASSERMAN:

22 Q Mr. Walczak, you're the expert in this
23 strategy, right? Nobody at Catalyst knows this
24 strategy better than you, right?

25 A I would say that's true.

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1 Q Left to your own devices, would you
2 have included the phrase, capital preservation in
3 all market conditions in the investment
4 objective?

5 A Left to my own devices? No, for the
6 same reason I didn't include it in the
7 predecessor fund description.

8 Q What are the reasons you didn't include
9 it in the predecessor fund description?

10 A I didn't think of it. I didn't think
11 it was relevant. It never occurred to me to use
12 that language.

13 MR. BENSON: I'm sorry. I thought you
14 said earlier that you thought it was implicit?

15 THE WITNESS: Well, it's implicit to me
16 in managing the fund, sure.

17 BY MR. SCHMIDT:

18 Q Do you believe that your trading
19 strategy is designed to preserve capital in a
20 rapidly rising market?

21 A That's how I manage it.

22 Q That's not the question.

23 The question is: Is the strategy
24 designed to preserve capital in a rapidly rising
25 market?

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1 This is not about your intent. Okay?
 2 This is about the strategy. Okay?
 3 So when you put on the strategy and you
 4 indicate in your projections where you think the
 5 sweet spot is, is the strategy designed to
 6 preserve capital in a rapidly rising market?
 7 A I believe the strategy is designed to
 8 preserve capital in all market conditions.
 9 Q That is not the question.
 10 A Okay.
 11 Q So please just answer the specific
 12 question. I don't care about any other market
 13 condition for the purposes of this question.
 14 A Okay.
 15 Q Okay?
 16 So I'm talking about a rapidly rising
 17 market, which you've described to investors and
 18 investment advisors, as the worst possible market
 19 environment for this strategy.
 20 Is it your testimony that the strategy
 21 is designed to preserve capital in that worst
 22 possible market environment for this strategy?
 23 A Yes.
 24 Q Okay.
 25 BY MR. BENSON:

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1 Q Just to bring this back, I'll represent
 2 to you that in Exhibit 133, which is the initial
 3 prospectus of the futures fund, there's no risk
 4 that touches upon this rapidly rising market.
 5 Are you aware of that?
 6 A I'm not -- I'm not aware of what's not
 7 in there, but if you tell me, I'll believe you.
 8 Q Okay. Are you surprised that there's
 9 no discussion of the risk relating to a rapidly
 10 rising market in this prospectus?
 11 A No.
 12 Q Why not? Isn't that something that
 13 investors should know about?
 14 A Well, as I've said, the opportunity
 15 to -- to earn a return in a rapidly rising market
 16 is less so than in other market conditions.
 17 Q So you've -- you've told wholesalers,
 18 or at least from what I understand, at various
 19 times that there is a risk to this strategy in a
 20 rapidly rising market, correct?
 21 A Yes.
 22 Q Okay. Why does that risk not appear in
 23 the prospectus for the futures fund?
 24 A I don't know.
 25 Q Okay.

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1 BY MR. SCHMIDT:
 2 Q Is it in the PPM for the Harbor fund?
 3 A I don't believe so.
 4 Q Why not?
 5 A Again, I don't perceive that to be a --
 6 a risk factor, as I understand the need to
 7 disclose them.
 8 Q Did you understand, when you were the
 9 portfolio manager of the Harbor fund, that a
 10 rapidly rising market is the worst possible
 11 market environment for your strategy?
 12 A Yes.
 13 Q Okay. And do you think a reasonable
 14 investor, trying to decide where to put his or
 15 her money, would want to know what's the worst
 16 possible market for a particular strategy?
 17 A I can't speculate on how people make
 18 their investment decisions.
 19 Q How would you make an investment
 20 decision? Would you want to know that?
 21 A I -- I would look and try to evaluate
 22 the suitability of the investment on all kinds of
 23 different criteria.
 24 Q Would that be one of them?
 25 Would you try to figure out how you

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1 might lose money with this investment and how you
 2 might gain money, what the risk reward is?
 3 A Sure.
 4 Q That's something that would be relevant
 5 to you as an investor?
 6 A Yes.
 7 Q Okay. I think you said before that the
 8 structure of the strategy is designed to preserve
 9 capital in a rapidly rising market even though
 10 it's the worst possible market environment for
 11 the strategy; is that correct?
 12 A Yes.
 13 Q Tell me how. What about the design of
 14 the strategy is focused on preserving capital in
 15 a rapidly rising market?
 16 A So the strategy is designed to preserve
 17 capital in all market conditions, including a
 18 rapidly rising market, and we do so by managing
 19 to a set of risk criteria that were designed with
 20 that preservation of capital objection -- or
 21 objective in mind.
 22 Q "Risk criteria," are you referring to
 23 the Exhibit 41 that we looked at before? It
 24 should be in front of you.
 25 A Yes.

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1 Q Okay. Can you please look at the risk
2 parameters on Exhibit 41 and tell me which ones
3 are focused on capital preservation please?

4 A The -- maintaining a relatively low
5 level of margin to NAV ensures that we don't get
6 forced into trades that would be contrary -- that
7 might cause losses or a lack of preservation
8 capital.

9 Q And, again, for the context of this
10 question, we are focused on which of those risk
11 factors are designed to preserve capital in a
12 rapidly rising market, right?

13 And a margin to NAV is one?

14 A Yes. And perhaps I'll answer the
15 question more generally in that all of these risk
16 metrics are design to preserve capitol for
17 shareholders in all market conditions.

18 Q Does that mean none of them are
19 specifically targeted at a rapidly rising market?

20 A None of these are specifically targeted
21 to a rapidly rising market.

22 Q Okay. So there's no risk factor that
23 is -- was specifically created and maintained to
24 deal with a worst possible market condition for
25 this particular strategy; is that fair?

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1 A The risk criteria that is most often
2 triggered in a rapidly rising market would be
3 the -- the call position metrics, but the
4 others -- even in that environment, the others
5 are still relevant.

6 Q So the most -- the position limit
7 calls?

8 A Yes.

9 Q That one?

10 A Yes.

11 Q Any other?

12 A Open option premium calls.

13 Q Okay. What else?

14 A Both of the margin statistics.

15 Q So SPAN Margin to NAV and actual margin
16 to NAV?

17 A Yes.

18 Q Okay. Anything else?

19 A The change in NAV alerts, both of them,
20 per week and per month at the bottom.

21 Q That would apply to any loss, right?

22 A Well, it certainly applies to a rapidly
23 rising market.

24 Q Right, because -- correct. Okay.

25 Tell me what about open option premiums

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1 for calls is particularly triggered in a rapidly
2 rising market?

3 A Typically, the way the strategy
4 operates in a rapidly rising market, the open
5 short-call premium will grow as risk grows.
6 That's why it's on the sheet. So when that gets
7 triggered, that encourages us to take corrective
8 action and adjust positions to mitigate the
9 extent of further losses.

10 Q And in your --

11 MR. ZILIAK: I was just going to say I
12 don't want to interrupt your flow, but I'm just
13 curious. Are you anticipating an early lunch and
14 we just push through to that or more like a late
15 lunch and we should take a break sometime before
16 that? Totally your call, obviously.

17 MR. SCHMIDT: We could probably take a
18 lunch relatively soon.

19 MR. ZILIAK: Okay. That's fine.

20 MR. SCHMIDT: Okay.

21 BY MR. SCHMIDT:

22 Q So it's your testimony that the -- the
23 way a rapidly rising market functions is such
24 that it's going to push the open option premium
25 value number up?

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1 A That would be one of the triggers that
2 it might hit, yeah.

3 Q Okay. And then you also said position
4 limit calls. How does a rapidly rising market
5 affect that metric?

6 A So that metric is designed -- that's an
7 entry metric designed to limit the number of
8 positions, and hence the risk, on the call side
9 of the portfolio.

10 Q If it's an entry metric, it's not
11 telling you what's happening when the market
12 rises. It's just telling you what's -- so
13 explain that to me.

14 A Sure. It limits the number of call
15 positions we can enter, and thereby should a
16 rapidly rising market ensue, our risk is
17 contained by that limited number of positions.

18 Q Okay, but the rapidly rising market
19 doesn't trigger that. That's something that
20 happens kind of upon initiation or the cap upon
21 initiation?

22 A Yes.

23 Q Okay. All right. So SPAN Margin to
24 NAV. How does a rapidly rising market affect that
25 metric?

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1 A Generally speaking, a rapidly rising
 2 market will require -- as risk increases and the
 3 market rises, that will require additional
 4 collateral and potentially trigger that metric.
 5 Q Why will it require additional
 6 collateral?
 7 A Because there's additional risk as the
 8 market rises, and that's a risk-based collateral
 9 determination.
 10 BY MR. WASSERMAN:
 11 Q More specifically your short positions
 12 increase in value, right?
 13 A Right.
 14 Q And so there's -- the counter parties
 15 to those short positions are more likely going to
 16 be paid by you, right?
 17 A I don't know the details of the
 18 algorithm, but as the market rises, short-call
 19 positions will require more collateral at the
 20 FCMO.
 21 Q All right. And generally when a short
 22 position -- when you are short and that asset
 23 increases in value, the margin you need to post
 24 for that position rises?
 25 A Yes.

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1 Q Right?
 2 A Right.
 3 BY MR. SCHMIDT:
 4 Q And is that explanation the same for
 5 actual margin?
 6 A Yes, for both margin numbers.
 7 Q Okay. Anything else about the risk
 8 factors in a rapidly rising market?
 9 A No. That should do it.
 10 Q Okay. Go ahead.
 11 BY MR. WASSERMAN:
 12 Q My apologies if we covered this a few
 13 months ago, but did you come up with the
 14 strategy, or did you learn the strategy from
 15 somewhere else?
 16 A Both. Meaning the positions that are
 17 used, the put spreads and call spreads, are very
 18 common options positions. So I certainly learned
 19 them at some point via some seminars and
 20 textbooks.
 21 I developed specific ways to utilize
 22 them through my own trading experience.
 23 Q And you feel like you've optimized the
 24 use of those strategies, right?
 25 A Never all the way there. Continuous

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1 improvement. And I mean that very seriously.
 2 Q But you -- but you believe in this
 3 strategy very much, right?
 4 A Yes.
 5 Q And you believe it's -- it's the best
 6 that you can do to optimize performance for the
 7 fund, right?
 8 A At any given moment -- we have lots of
 9 ideas cooking now based on our experience last
 10 year about how to improvement them, but at any
 11 given moment, of course, we're as good as we can
 12 be.
 13 Q So in 2015, 2016, early 2017, you were
 14 very disciplined about the strategy, right?
 15 A Yeah. Sure.
 16 Q And you -- you want to stick to the
 17 strategy because you believe in it regardless of
 18 what happens in the short-term, right?
 19 A Well, I stick to the strategy because,
 20 over time, repetitive execution of a particular
 21 strategy, in my view, is the way to achieve
 22 success.
 23 Q Even though there might be short-term
 24 volatility?
 25 A Yes.

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1 Q In fact, you encourage people,
 2 investors and advisors, not to look at the
 3 short-term volatility of a fund, right?
 4 A Yeah, I've encouraged them not to look
 5 at daily price changes because they tend not to
 6 be representative and difficult to understand.
 7 Q And in connection with that philosophy,
 8 if on any given day you're looking at potential
 9 short-term risks, in your mind, those shouldn't
 10 be paid attention to in light of your -- your
 11 belief in the long-term strategy?
 12 A No, that's not true at all.
 13 You have to pay attention to short-term
 14 risks, but the point is that over time you also
 15 have to execute the strategy consistently.
 16 Q And perhaps -- would it be accurate to
 17 say that those short-term risks are not given as
 18 much weight, in your mind, in light of your
 19 belief in the long-term performance of the
 20 strategy?
 21 A No, that's not accurate.
 22 Q Can you say what's not accurate about
 23 it?
 24 A It's not accurate that short-term risks
 25 are given less weight than some other time frame

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1 sort of risks that I might consider.
 2 Q But you do tell investors, for example,
 3 if the fund is down three, four percent in a week
 4 not to be distracted by that?

5 A What I tell investors is it is
 6 difficult and frustrating to try and predict how
 7 the fund will behave from things that they can
 8 observe. That's the primary reason we tell
 9 investors -- or I tell investors -- or advisors,
 10 actually -- I don't speak to investors -- but why
 11 I tell advisors that they should not put too much
 12 weight on short-term performance.

13 Q I have a slightly more lighthearted few
 14 questions before lunch.

15 Do you -- do you play blackjack, by any
 16 chance?

17 A No.

18 Q Then that cuts off that questioning.

19 I have no further questions on that
 20 particular subject.

21 MR. SCHMIDT: Does anybody else have
 22 anything they want to ask on this topic before we
 23 break for lunch?

24 MR. BENSON: No.

25 MR. SCHMIDT: Okay. We are off the

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1 record at 12:11 p.m.
 2 (Whereupon, at 12:11 p.m., a luncheon
 3 recess was taken.)

4 A F T E R N O O N S E S S I O N

5 BY MR. SCHMIDT:

6 Q So we're back on the record at 1:28
 7 p.m. Actually this is something I probably should
 8 have mentioned earlier. During any -- the lunch
 9 break or any of the breaks we've had today,
 10 neither myself or any member of the staff has had
 11 any substantive discussions with you about the
 12 subject of the investigation; is that correct?

13 A That's correct.

14 Q Okay. Same is true with the CFTC
 15 staff?

16 A Yes.

17 Q Okay. So right before we took a break,
 18 there were a series of questions about your
 19 involvement in the drafting, review, and approval
 20 of certain documents?

21 A Yes.

22 Q Okay. And you gave us your best
 23 recollection as to what sections you were asked
 24 to review, and you think it was the principal
 25 trading strategies; is that correct?

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1 A Yes.

2 Q But the best way to get to the answer
 3 to that question would be just to look at
 4 whatever e-mail was sent to you, and that would
 5 tell us, right, for sure one way or the another?

6 A I guess, sure.

7 Q Okay. I guess another way to ask it
 8 is: Can you ever remember being asked to review a
 9 section of the prospectus or a fact sheet that --
 10 where the request did not come to you in the form
 11 of an e-mail?

12 A No.

13 Q So nobody ever mailed it to you with a
 14 letter that said, please review this?

15 A No.

16 Q Okay.

17 BY MR. BENSON:

18 Q And just following up on that, Catalyst
 19 Capital Advisors, the employees of that firm,
 20 they're based in New York state, right?

21 A Some of them are. You know, I don't --
 22 to be honest, I don't know who's an employee and
 23 who's not, and they have people that work for
 24 Catalyst in some capacity all over the place.

25 Q Okay. I'll say it this way: You're

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1 not aware of any Catalyst Capital Advisor
 2 employees based in Wisconsin, right?

3 A I'm not aware of any, no.

4 BY MR. WASSERMAN: And none in your
 5 office in Madison?

6 THE WITNESS: Daniel Saffrin gets paid
 7 by Catalyst on a W-2. So, again, definition of
 8 employee, maybe he is.

9 BY MR. SCHMIDT:

10 Q Can you say with certainty that Daniel
 11 Saffrin has never approached you and asked you to
 12 review portions of a prospectus?

13 A Yes.

14 Q Okay. And at the time he was an
 15 intern, right?

16 A Which time?

17 Q Well, all the way up until the time he
 18 graduated at least in May of 2017, right?

19 A Yes.

20 Q Okay. So you testified that your
 21 understanding was that these documents,
 22 prospectus fact sheets, need to be true,
 23 accurate, and complete, right?

24 A Yes.

25 Q Okay. And if -- and that's true both

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1 for the initial document and any revisions,
 2 right?
 3 A Yes.
 4 Q And if any circumstances change with
 5 respect to the fund that is material to what's
 6 contained in the prospectus or the fact sheet,
 7 there's a duty to update those documents, right?
 8 A I believe so, but I don't know.
 9 Q Okay. Again, this is your
 10 understanding. Is it your understanding that, if
 11 something materially changes, for example, with
 12 your trading strategy, there's a duty to update
 13 those documents to let people know that something
 14 material has changed?
 15 A Again, I don't know the requirements in
 16 terms of timing or what needs to be done, no.
 17 I'm just not expert in that area.
 18 Q Yeah. I'm not asking about timing.
 19 I'm just asking if you -- if your understanding
 20 is that if something material happens that
 21 changes that there's a duty to update those
 22 documents so that they capture what the current
 23 status is. Whether that has to be done in a
 24 week, a month, or whenever, but is there a duty
 25 to do that?

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1 A That would seem logical, but I do not
 2 understand what the duties of an advisor are.
 3 Q Okay.
 4 BY MR. BENSON:
 5 Q Have you received any training from
 6 Catalyst or anyone about the duties that are
 7 incumbent upon you as a portfolio manager?
 8 A Yes. Duties incumbent upon me as a
 9 portfolio manager, yes.
 10 Q Okay. And are those duties -- you said
 11 that you were not aware of the duties that are
 12 incumbent upon an advisor, right?
 13 A Correct.
 14 Q So can you explain to me what you mean
 15 when you said that you don't know what the duties
 16 are on an advisor?
 17 A My understanding of the question --
 18 correct me if I'm wrong -- was did I understand
 19 that documents needed to be updated if something
 20 was not true or accurate any longer.
 21 And I can speculate, but I won't as I
 22 do not know what an advisor under the '40 Act is
 23 required to do or not do.
 24 Q Do you, as a portfolio manager of the
 25 futures fund, have any obligations under the '40

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1 Act?
 2 A I have an obligation to follow the
 3 prospectus.
 4 BY MR. SCHMIDT:
 5 Q I am going to show you what's been
 6 marked as Exhibit 25. It's a big document.
 7 Do you recognize this document?
 8 MR. ZILIAK: I'll just repeat the
 9 earlier --
 10 THE REPORTER: I'm sorry. I'll just
 11 repeat the earlier -- and then what did you say?
 12 MR. ZILIAK: My earlier request at some
 13 stage receive Bates numbers for the earlier
 14 exhibits that lacked those and also for this one
 15 please.
 16 MR. BENSON: Exhibit 25 does not have a
 17 Bates number.
 18 MR. ZILIAK: Okay.
 19 MR. BENSON: You can see at the bottom
 20 of the document it was pulled from EDGAR. This
 21 is a publically available document.
 22 MR. ZILIAK: Okay. Still the root
 23 request applies to two previous documents we can
 24 do during the next break.
 25 MR. SCHMIDT: Okay. Can you just keep

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1 a tally of whatever ones --
 2 MR. ZILIAK: Yes.
 3 MR. SCHMIDT: -- and then at the end of
 4 the day, we'll just take care of all of it?
 5 MR. ZILIAK: Yes, sir. Can do.
 6 MR. SCHMIDT: Okay.
 7 BY MR. SCHMIDT:
 8 Q So in all that I don't know if we got
 9 an answer, but the question was: Do you
 10 recognize this document?
 11 A Yes.
 12 Q Okay. Can you tell us what it is
 13 please?
 14 A It's a prospectus for a number of
 15 Catalyst mutual funds.
 16 Q And it includes the futures fund and
 17 the commodity fund, right?
 18 A Yes.
 19 Q Okay. And it's dated November 1, 2016?
 20 A Yes.
 21 Q Okay. So this would be an example of
 22 one of those later-dated prospectus that may or
 23 may not have language that's changed from the
 24 initial prospectus for the futures fund?
 25 A Yes.

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1 Q Okay. Looking at this document, does
2 it trigger any memory as to whether you had any
3 role in drafting, reviewing, or approving the
4 sections related to either -- well, to the
5 futures fund first?
6 A No.
7 Q Okay. What about those questions with
8 respect to the commodity fund?
9 A No.
10 Q Did you have any role in drafting,
11 reviewing, or approving the prospectus for the
12 commodity fund?
13 A Yes.
14 Q What was your role in drafting the
15 prospectus for the commodity fund?
16 A I did not have a role in drafting it.
17 I do recall reviewing the description
18 of the investment strategy.
19 Q Okay. And previously you said your --
20 one of your roles in drafting -- in the drafting
21 process for the futures fund prospectus was to
22 provide documents that served as a starting point
23 for somebody else to put documents together,
24 right?
25 A Yes.

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1 Q Did you do anything like that with
2 respect to the commodity fund?
3 A No.
4 Q Okay. You didn't have any documents?
5 A No.
6 Q Sorry. Is that a yes, you didn't have
7 any?
8 A It's a no, I didn't have any.
9 Q Okay. So answer to questions about
10 your role in drafting, reviewing, and approving
11 the section regarding the futures fund, exact
12 same as your answers before?
13 A I don't recall my answers before.
14 Q Your answer before was: You think you
15 were sent a section about principal trading
16 strategies, and, if you were, you reviewed it,
17 but you did not review or approve this entire
18 document, and nobody asked you to.
19 A Yes.
20 Q I think is the sum of your testimony
21 before.
22 A Yes, I would agree with that for the
23 commodities fund.
24 Q Okay. And also for this revision of
25 the futures fund?

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1 A Yes.
2 Q Okay. So this is November 1, 2016.
3 Is -- at that date is Ms. Rios a
4 portfolio manager for the futures fund?
5 A I think she was described as such in
6 marketing materials that date, yes.
7 Q Okay. So if you flip to Page 25. And
8 there's different numbering. So I'm talking
9 about the number in the bottom center of the
10 page, not the number in the top right corner.
11 A Okay.
12 Q All right. So if you flip back to Page
13 20, you can see this is the section about the
14 futures fund?
15 A Okay.
16 Q Do you see that?
17 A Yep.
18 Q Okay. And so if you flip to Page 25,
19 this describes the advisor and the portfolio
20 manager for the futures fund, right?
21 A Correct.
22 Q And for the PM, it's just you and not
23 Ms. Rios, right?
24 A That's what's described here, yes.
25 Q Okay. And that's accurate or

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1 inaccurate?
2 A It's accurate that I'm a portfolio
3 manager of the advisor on this fund.
4 Q Okay. Is -- is it complete as to who
5 the portfolio managers are on the fund?
6 A It's as complete as I think it needs to
7 be in a prospectus.
8 Q And what's your understanding of that?
9 A My understanding is that the portfolio
10 manager -- the advisor may name a portfolio
11 manager or may not. That was my understanding.
12 Q I see. So at this point, if there's
13 two portfolio managers, the prospectus only has
14 to tell people about one of them?
15 A That's the extent of my understanding.
16 Q And where do you get that
17 understanding?
18 A Put another way, it's not my
19 understanding that everyone involved in managing
20 the portfolio must be listed in the prospectus.
21 Now, I could be mistaken. I've
22 mentioned in prior testimony that I'm not
23 familiar with the requirements of a prospectus
24 under the '40 Act in terms of what must or must
25 not be disclosed.

<p style="text-align: right;">Page 177</p> <p>1 Q But you have an understanding, and I'm</p> <p>2 just wondering where you got it.</p> <p>3 A Well, I have a lack of understanding,</p> <p>4 is what I'm telling you.</p> <p>5 Q So you don't know one way or the</p> <p>6 another?</p> <p>7 A Exactly.</p> <p>8 Q Okay. So you don't actually have an</p> <p>9 understanding?</p> <p>10 A Right. That would be fair.</p> <p>11 Q Okay. So -- so before when we were</p> <p>12 talking about the initial drafting of the</p> <p>13 prospectus for the futures fund, the starting</p> <p>14 point were documents that you had regarding the</p> <p>15 Harbor fund that you provided to Catalyst,</p> <p>16 specifically the most recently version of the</p> <p>17 PPM, correct?</p> <p>18 A Correct.</p> <p>19 Q And you yourself did not draft the</p> <p>20 prospectus, the initial prospectus, for the</p> <p>21 commodity fund, right?</p> <p>22 A Correct.</p> <p>23 Q So how does that document get created</p> <p>24 if there are no source documents to create it?</p> <p>25 A I have no idea.</p>	<p style="text-align: right;">Page 179</p> <p>1 information they have on the vehicle they're</p> <p>2 investing in.</p> <p>3 Q Would it be important, in your view,</p> <p>4 that all marketing materials used in connection</p> <p>5 with a fund be consistent with that fund's</p> <p>6 prospectus?</p> <p>7 A I don't have a strong opinion of that.</p> <p>8 It seems logical.</p> <p>9 BY MR. SCHMIDT:</p> <p>10 Q If you flip to the table of contents at</p> <p>11 the beginning of this Exhibit 25, you can see</p> <p>12 that the commodity fund starts on Page 54.</p> <p>13 A Okay.</p> <p>14 Q So if you flip there. Okay. And then</p> <p>15 go a couple pages further to Page 60, which is</p> <p>16 the same section that we just looked at with</p> <p>17 respect to the futures fund. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q So there the portfolio manager is</p> <p>20 listed -- who's listed there?</p> <p>21 A It looks like I am and Ms. Rios.</p> <p>22 Q Okay. So that would indicate that all</p> <p>23 the portfolio managers for the commodity fund are</p> <p>24 listed, right?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 178</p> <p>1 Q You're the portfolio manager from</p> <p>2 inception of the commodity fund, right?</p> <p>3 A Yes.</p> <p>4 Q Who in the world knows the trading</p> <p>5 strategies of that fund better than you at time</p> <p>6 of inception?</p> <p>7 A Probably no one.</p> <p>8 Q Okay. Yet nobody asked you to write</p> <p>9 out what the objective is, what the principal</p> <p>10 trading strategies are, what the risks are?</p> <p>11 A No.</p> <p>12 Q Okay.</p> <p>13 MR. BENSON: Do you know who did draft</p> <p>14 those?</p> <p>15 THE WITNESS: I don't.</p> <p>16 BY MR. SCHMIDT:</p> <p>17 Q And were you asked to approve -- review</p> <p>18 or approve the final version of the prospectus?</p> <p>19 A No.</p> <p>20 BY MR. BENSON:</p> <p>21 Q Is the prospectus an important document</p> <p>22 to investors in your view?</p> <p>23 A Yes.</p> <p>24 Q Why?</p> <p>25 A It's the comprehensive piece of</p>	<p style="text-align: right;">Page 180</p> <p>1 Q But that's not true for the futures</p> <p>2 fund?</p> <p>3 A Yes.</p> <p>4 Q Okay. And do you have any</p> <p>5 understanding or explanation for that</p> <p>6 inconsistency?</p> <p>7 A No.</p> <p>8 Q Okay. And were you the person</p> <p>9 responsible for listing who should be listed as</p> <p>10 portfolio manager for either of these funds and</p> <p>11 the prospectus?</p> <p>12 A I don't recall. I didn't write it. I</p> <p>13 don't recall if I reviewed that particular</p> <p>14 portion or not.</p> <p>15 Q Okay.</p> <p>16 1 BY MR. BENSON:</p> <p>17 Q Do you know if Catalyst -- anyone at</p> <p>18 Catalyst reviewed the prospectus before it was</p> <p>19 finalized?</p> <p>20 A I don't know for a fact, but it would</p> <p>21 seem like perhaps someone did.</p> <p>22 Q Do you know -- any suspicion as to who?</p> <p>23 A No.</p> <p>24 Q Jerry Szilagyi?</p> <p>25 A He certainly might have.</p>

<p style="text-align: right;">Page 181</p> <p>1 I don't know his involvement in 2 reviewing prospectuses. 3 BY MR. SCHMIDT: 4 Q Would it surprise you if he had no 5 role? 6 A No. I really haven't thought about it 7 before. I've never had a conversation with him 8 in which it came up, did you or did you not 9 review the prospectus. I have no thoughts on the 10 matter. 11 Q I'm handing you what's been marked as 12 Exhibit 75. 13 Do you recognize that document? 14 A Yes. 15 Q What is it? 16 A Looks like a fact sheet for the hedged 17 futures strategy fund. 18 Q Dated March 31, 2016? 19 A Yes. 20 Q Do you know if there is more than one 21 fact sheet for the futures fund? 22 A I think they -- they get updated on a 23 regular bases. So there's more than one. 24 Q Do you think it's quarterly? 25 A I don't know if it's quarterly or not.</p>	<p style="text-align: right;">Page 183</p> <p>1 A Not approval. Just asked for my 2 comment on whether anything needs to be changed 3 on the investment strategy. 4 Q And to the extent you got any of those 5 requests for your review, that would have been 6 via e-mail, you believe? 7 A Yes. 8 Q Okay. And same as before, do you have 9 any memory as to who might have sent you those 10 e-mails? 11 A I do remember Michael Schoonover at 12 some point in the past, and there may have been 13 others, but he's the one I remember. 14 Q Sent you the fact sheet? 15 A Yes. 16 THE REPORTER: What was his name? 17 THE WITNESS: Michael Schoonover. 18 THE REPORTER: That's what I thought I 19 heard. Could you spell that? 20 THE WITNESS: S-c-h-o-o-n-e-r. 21 MR. ZILIAK: That's right, o-v-e-r. 22 Schoonover, right? 23 THE WITNESS: Or no. It's Schoon -- is 24 it? 25 MR. ZILIAK: Yeah.</p>
<p style="text-align: right;">Page 182</p> <p>1 Q Okay. Are you -- when a new one of 2 these documents is created, is it distributed to 3 you? 4 A I think it is distributed to me, yeah. 5 Q Okay. Do you have any role in the 6 drafting of this document? 7 A In the past I've been asked to review 8 and suggest any changes that might be necessary 9 to the investment strategy description. 10 Q And is that a similar process where 11 you -- the investment strategy is in a box on the 12 right-hand side under the title Investment 13 Strategy. Is that what you're looking at? 14 A Correct. 15 Q Okay. And is that a situation where 16 that language or whatever language you're asked 17 to review is cut and pasted into an e-mail and 18 you review it, or are you actually sent this 19 entire document and asked to review it? 20 A I certainly -- I certainly know that 21 sometimes I'm sent the entire document. I don't 22 recall. Maybe sometimes I'm sent that piece, but 23 it's more likely I get the entire document. 24 Q Prior to it being finalized and asked 25 for your review and approval?</p>	<p style="text-align: right;">Page 184</p> <p>1 THE WITNESS: Okay. 2 THE REPORTER: So can I have it again 3 please? 4 MR. ZILIAK: S-c-h-o-o-n-o-v-e-r. 5 THE REPORTER: Thank you. 6 BY MR. SCHMIDT: 7 Q So I'll ask you the same questions 8 about the commodity fund. I'll just show you an 9 example. This is Exhibit 86, which I believe -- 10 well, you can tell me. 11 (SEC Exhibit No. 86 was 12 marked for identification.) 13 BY MR. SCHMIDT: 14 Q Do you know what this is? 15 A Fact sheet for the commodity fund. 16 Q Okay. Essentially the same thing as 17 Exhibit 75 but different date, different fund, 18 but the same purpose, right? 19 A Yes. 20 Q Okay. And these are documents that are 21 given to investors; is that correct? 22 A I don't know what they're used for. 23 Q You have no idea what these documents 24 are used for? 25 A No idea.</p>

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1 Q Okay. When you were the portfolio
2 manager for the Harbor fund, you used fact sheets
3 that are just like this to give to investors,
4 right?

5 A Yes.

6 Q Okay. If I asked you the same
7 questions about your role in drafting, reviewing,
8 and improving the content of this document and
9 other fact sheets for the commodity fund like
10 this, are your answers the same as it was with
11 Exhibit 75?

12 A They -- they differ as follows:
13 Subsequent to the early versions -- and I can't
14 tell you for sure how many of these I reviewed.
15 I allowed Ms. Rios as the PM of the commodity
16 fund to review them subsequently.

17 Q And did you tell Catalyst that she was
18 going to take over that role?

19 A No one asked me who was doing it. I
20 don't recall anyone sending this to me and -- and
21 my not returning it.

22 Q I guess -- that's not the question.

23 So I want to understand. After you
24 make this decision that she can -- Ms. Rios?

25 A Right.

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1 Q Can review and approve it or review it
2 for accuracy, is it a situation where you're
3 getting the requests still, you're forwarding to
4 Ms. Rios, or is the request going straight to Ms.
5 Rios?

6 A Straight to her.

7 Q Okay. So how do they know that the
8 request goes straight to her if you haven't had a
9 conversation with them that Ms. Rios was going to
10 take over this task?

11 A They assumed that she would do it.

12 Q Okay.

13 A I mean, no one asked me. They sent it
14 to her.

15 Q I'll show you what's been marked as --
16 I apologize. It looks like I only have one copy
17 of this, but I'll give it to you. So this is
18 marked as Exhibit 85.

19 (SEC Exhibit No. 85 was
20 marked for identification.)

21 BY MR. SCHMIDT:

22 Q It is -- well, let me ask: Do you
23 recognize that document?

24 A I've seen versions of a presentation
25 that looks like this before. I don't know how

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1 many versions there may have been. So this is a
2 presentation of some kind.

3 Q Okay. It is a presentation about the
4 futures fund, correct?

5 A Yes.

6 Q Okay. And -- in what context have you
7 seen this document before or a document like it?

8 A I recall seeing it. I can't tell you
9 exactly where. If you would like, maybe if I
10 take a look at it, I can recall.

11 Q Yeah. Do you know what the document is
12 used for? The purpose?

13 A No.

14 Q Have you ever gone with one of
15 Catalyst's wholesalers to talk to an investment
16 advisor?

17 A Yes.

18 Q Have you ever used a presentation like
19 this to talk to that investment advisor?

20 A I don't recall any -- any specific use
21 of this. I do recall a use of the fact sheet.

22 Q Okay. So take a look through it. See
23 if you recognize that document.

24 A Printer is out of ink. Yeah. I

25 recognize this. This is a document that may have

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1 been used in discussions with the wholesalers.
2 You know, I've seen it before. I don't recall if
3 this is a specific one that I might have used
4 myself to present to wholesalers, but that's a
5 likely or a possible use of it.

6 Q Okay. Looking at it, flipping through
7 it, it's possible you have personally used this
8 presentation to talk about the futures fund?

9 A It's possible.

10 Q Do you think it's likely?

11 A I just remember -- I don't do a lot of
12 that, anything with sales support kind of work.
13 Not what I'm good at. Not what I like to do.

14 , but I do recognize that I'm certainly
15 the author of portions of this, and it is

16 possible that early on, years ago, I may have
17 used it with the wholesalers.

18 Q What portions of this document do you
19 recognize as being yours that you authored?

20 A Well, the parts I can read, a good
21 portion of the commentary. The verbiage is mine.
22 Some of the graphics were done by others. Some
23 of the wording looks a little different than I
24 remember. But for the most part I'll say that I
25 developed or I authored much of this.

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1 MR. ZILIAK: If I could just state for
2 the record, as implied by Mr. Walczak's comment
3 earlier about the printer being out of ink, parts
4 of this do appear hard to read. It seems sort of
5 an inverted color, that is white text on a dark
6 background and that did not come out well. It's
7 not an original color copy. It's a photo copy
8 that does seem to blanch in certain areas. A lot
9 of the text is readable. Can't say all of it is.
10 All right. Thank you.

11 MR. SCHMIDT: That's fine. We'll print
12 out another copy.

13 MR. BENSON: We'll print out another
14 copy.

15 BY MR. SCHMIDT:

16 Q Do you know how this document was
17 created?

18 A I'm not sure I understand what you
19 mean.

20 Q Sure. Was it the marketing folks at
21 Catalyst in New York who created the document?

22 A No. I think I did.

23 Q Okay.

24 A Or some combination of myself and Ms.
25 Rios.

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1 Q Okay. And you think that you created
2 the original version and that it was updated at
3 various times?

4 A Could have been. Right. There may be
5 more than one version of this presentation.

6 Q Do you remember updating it or
7 contributing to any update?

8 A I don't remember specifically, but it
9 is -- it's not unlikely that I at some point
10 reviewed it, maybe tweaked some words here and
11 there.

12 Q Okay. Do you have any -- other than
13 yourself and Ms. Rios, do you know of anybody
14 else who participated in the drafting, review, or
15 approval of that document?

16 A I don't know.

17 Q Okay. Can you go to Slide 11 on there?
18 Here. Let me just see it. I want to make sure
19 that it's one of the pages that's legible. Yeah.
20 Okay. Do you recognize that slide?

21 A Yes.

22 Q Okay. There's a reference to aggregate
23 portfolio stop-loss measures on there. Do you
24 see that?

25 A Yup.

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1 Q What does that mean?

2 A That's intended to talk about some of
3 the risk metrics that are done at a portfolio
4 level that trigger us. I think I testified early
5 this morning what was meant by a stop loss in my
6 mind.

7 So if we refer to that portion of my
8 testimony, that still stands. And this refers to
9 those different methods of employing stop loss at
10 a portfolio level.

11 Q Can I see that for a second?

12 So I'm going to read in the whole
13 paragraph that you're referring to. And it says,
14 A risk management strategy explicitly focused on
15 limiting losses by hedging individual positions
16 at initiation, comma, ongoing adjustment based on
17 well-defined risk parameters, comma, and
18 aggregate portfolio stop-loss measures, right?

19 A Yes.

20 Q Okay. So is it your testimony that the
21 phrase, "aggregate portfolio stop-loss measures,"
22 is duplicative of ongoing adjustment based on
23 well-defined risk parameters?

24 A There's certainly overlap, certainly.

25 Q What's different?

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1 A Well, I'm not sure what's different.
2 Some of them are the same. I'm not sure I
3 understand the question.

4 Q Sure. It gives a list, 1, 2 and 3.

5 A Right.

6 Q Is there anything different about 3
7 that is not covered by 2, in your mind?

8 MR. ZILIAK: Just to be clear, the
9 numbers 1, 2, and 3 do not appear in the
10 document. This is your representation of the
11 document.

12 BY MR. SCHMIDT:

13 Q There are three items listed there. I
14 just read them. They're separated by commas.
15 The last one has an "and" before it.

16 Do you understand what I'm saying, Mr.
17 Walczak?

18 A Yes. Right.

19 Q So the question is: What's different
20 about 3 that requires it to be "and 3" that is
21 not covered by Item 2 on that list?

22 A So Item 2 refers to ongoing
23 adjustment -- and I'll read it as well, "ongoing
24 adjustment based on well-defined risk
25 parameters."

<p style="text-align: right;">Page 193</p> <p>1 So some of the risk parameters would 2 require position adjustments, not necessarily on 3 an aggregate portfolio stop-loss basis. And some 4 are very clearly at the aggregate portfolio level 5 and require action to, as I testified earlier, to 6 stop loss or limit loss. 7 Q Can I see that again? Okay. 8 MR. WASSERMAN: Can I ask a few 9 questions before we go on? 10 MR. SCHMIDT: Sure. 11 BY MR. WASSERMAN: 12 Q Can I turn your attention back to 13 Exhibit 109? 14 And, Mr. Walczak, this is a disclosure 15 that dates from the time prior to the '40 Act 16 conversion of the fund, correct? 17 A Yes. 18 Q And on the right-hand column of the 19 first page, there's a section titled Our Robust 20 Risk Management Protocols, correct? 21 A Yes. 22 Q Can you read those five bullets right 23 there? 24 A Optimize leverage, parenthesis, 25 position sizing, close parenthesis, rules, trade</p>	<p style="text-align: right;">Page 195</p> <p>1 about stop-loss measures on Slide 11? 2 A I don't recall if I specifically did, 3 but as I said, most of this is my authorship. 4 Q Do you recall adding -- I'm sorry. 5 You just said you didn't recall adding 6 the stop-loss measure language. 7 A Right. 8 Q How would you actually place a hard 9 limit on losses in the hedged futures strategy? 10 A I don't know that -- that there is a 11 way to place a hard limit on losses in hedged 12 futures strategy. 13 MR. WASSERMAN: Thank you. 14 BY MR. SCHMIDT: 15 Q As we go through, if you notice any 16 exhibit that you feel has been printed in a way 17 that makes it difficult for you to tell what's 18 going on or read the language, just let me know. 19 A Okay. 20 Q All right. I'm happy to have them 21 reprint it, print it in color, whatever we need 22 to do. 23 A Sure. 24 Q Okay? I'm going to hand you what's 25 been marked as Exhibit 87.</p>
<p style="text-align: right;">Page 194</p> <p>1 entry scaling, diversification of time and price 2 exposure, option-structure-based dynamic hedging, 3 rigged-portfolio-based risk limits. 4 Q Okay. And then if you turn your 5 attention back to Slide 8 of the exhibit that you 6 were just shown. 7 A Slide 8? 8 Q It's a slide titled Risk Management is 9 an Imperative Part of the Strategy. I think it's 10 Slide 8, but correct me if I'm wrong. 11 A Yes. 12 Q And there -- there's a bullet list of 13 things the fund does to manage risk on that slide 14 as well that largely align with the bullets that 15 you just read? 16 A Yes. 17 Q In Exhibit 109, is there any reference 18 to stop-loss measures? 19 A I don't see any. 20 Q In Exhibit -- I'm sorry. Jake, what's 21 the name of the exhibit -- the presentation 22 exhibit? 23 MR. SCHMIDT: 85. 24 BY MR. WASSERMAN: 25 Q In Exhibit 85, did you add the language</p>	<p style="text-align: right;">Page 196</p> <p>1 (SEC Exhibit No. 87 was 2 marked for identification.) 3 BY MR. SCHMIDT: 4 Q It's my understanding that this is a 5 similar document to 85 but applies to the 6 commodity fund. Is that a fair statements? 7 A That's what it appears to be, yes. 8 Q Okay. And before I hand it to you, 9 were you aware that this kind of presentation 10 existed for the commodity fund? 11 A Yes. 12 Q Okay. And same question: Are you the 13 author of the majority of the substantive 14 information in this presentation? 15 A If you give me a moment to review. 16 Q Of course. 17 Can I -- I think what has happened -- 18 can I modify that please? 19 So it seems a little thick. 20 That's Exhibit 87. 21 MR. ZILIAK: Sorry. So what just 22 happened here? 23 THE WITNESS: There were three copies 24 stapled altogether. 25 MR. ZILIAK: Oh, okay.</p>

<p style="text-align: right;">Page 197</p> <p>1 MR. BENSON: Are we still looking at 2 Exhibit 85? 3 MR. SCHMIDT: No, but hold on. I was 4 asking him the same questions about Exhibit 87. 5 MR. BENSON: I'm sorry. '87? What's 6 the difference between 85 and 87? 7 THE WITNESS: So this presentation 8 appears to me to be a cut-and-paste version of 9 some content from hedged futures presentation and 10 other content added by Ms. Rios. 11 BY MR. SCHMIDT: 12 Q Okay. So do you know what content was 13 added by Ms. Rios? 14 A I can't tell specifically other than I 15 recognize certain items that weren't present in 16 the hedged futures -- 17 Q That's actually a better way to go 18 about it. Okay. 19 To the extent that the language does 20 not appear in the other presentation, is it your 21 understanding that Ms. Rios was the source of 22 that information? 23 A Yes. 24 Q Okay. And to the extent it was in the 25 other presentation, you were the ultimate author</p>	<p style="text-align: right;">Page 199</p> <p>1 Q From whom? 2 A I don't recall. 3 Q Mr. Schoonover? 4 A I don't think it's him in this case. 5 It could have been in the past. 6 Q Okay. 7 MR. BENSON: Robert Glass? 8 THE REPORTER: I'm sorry. What was the 9 question? 10 MR. BENSON: Robert Glass? 11 THE WITNESS: I don't believe so. I 12 don't believe that he gets involved in this part 13 of compliance and review. 14 BY MR. SCHMIDT: 15 Q Okay. And -- 16 MR. ZILIAK: Sorry. Does anyone know 17 if Robert Glass is an attorney? 18 MR. BENSON: Not an attorney. 19 MR. ZILIAK: Okay. Thank you. 20 MR. BENSON: That's my understanding. 21 He's the chief -- even if he is an attorney, he 22 functions as the chief compliance officer. 23 MR. ZILIAK: All right. 24 BY MR. SCHMIDT: 25 Q Same question regarding the use of this</p>
<p style="text-align: right;">Page 198</p> <p>1 of that, and it got transferred over to here? 2 A Yes. 3 Q Okay. Other than you and Ms. Rios, 4 anybody else you're aware of that reviewed, 5 approved, or drafted any portion of this 6 document? 7 A I'm not aware, recognizing that this 8 and other materials that Catalyst requests us to 9 prepare are sent to Catalyst, and I can't 10 speculate on what's their process of review or -- 11 Q Again, this is just your knowledge? 12 A Right. So I have no knowledge of what 13 is done with these presentations when we submit 14 them to Catalyst. 15 Q Okay. But you do submit them to 16 Catalyst before you use them with anybody outside 17 of -- with any outside person? 18 A Yes. 19 Q Okay. And at some point does Catalyst 20 tell you it's now okay for you to use this 21 document? 22 A Yes. 23 Q And how does that approval or 24 permission get communicated to you? 25 A I believe it's via e-mail.</p>	<p style="text-align: right;">Page 200</p> <p>1 document: Have you given this presentation 2 personally? 3 A No. I don't believe so. 4 Q Have you been present when Ms. Rios 5 has? 6 A Possibly the sales meeting. 7 Q At a sales meeting. Okay. 8 A Possibly, right. 9 Q Do you know if this document is ever 10 used with investment advisors or outside 11 investors or prospective investors? 12 A I don't know. 13 Q Okay. Who do you think would know? 14 A I don't want to speculate. I don't 15 know who would know. 16 Q The wholesalers would know, right? 17 A I don't know. 18 MR. BENSON: You can speculate. 19 THE WITNESS: I prefer not to. 20 MR. BENSON: I understand your prefer 21 not to. I'm asking you to speculate. 22 THE WITNESS: I decline to speculate. 23 I'm not going to guess. That's all. 24 BY MR. SCHMIDT: 25 Q The role of the wholesaler is outside</p>

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1 sales. They try to get investment advisors to
 2 invest in the various Catalyst funds, correct?
 3 A Yes.
 4 Q Okay. And in doing that, they use
 5 marketing materials?
 6 A Yes.
 7 Q Would it surprise you if this is one of
 8 the marketing materials?
 9 A It wouldn't surprise me.
 10 Q Okay.
 11 A , but I don't know for a fact whether
 12 they use it or not.
 13 Q Okay. This is a color copy of Exhibit
 14 85. It doesn't have a sticker on it, but do you
 15 recognize that as the presentation -- if you look
 16 at Exhibit 85 --
 17 A Sure.
 18 Q The reason I'm handing it to you is
 19 that you mentioned that there were certain parts
 20 that were not as legible as other parts.
 21 So particularly with the slides that we
 22 looked at, which were Slide 11. I think Sam
 23 asked you to look at Slide 8. Looking at those
 24 slides, does it change your answers in any way to
 25 the questions about those slides that you just

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1 gave?
 2 A No.
 3 Q Okay. And flipping through the entire
 4 presentation, this color copy is completely
 5 legible, right?
 6 A Yes.
 7 Q Okay. Does it -- flipping through it,
 8 does it your change your answers to anything that
 9 you gave previously?
 10 A No.
 11 MR. BENSON: Can I see -- would be
 12 Exhibit 85 -- so just for purposes of our -- our
 13 record today, the way that we'll mark these,
 14 Exhibit 85 has been handed to you as a
 15 black-and-white copy. We're going to append the
 16 color copy to the back of it.
 17 So that's how we're going to treat
 18 Exhibit 85 there.
 19 The duplicate, in fact, if you look,
 20 the last page on Page 17 of the marked Exhibit 85
 21 and then the color copy, it has the
 22 4473-NLD-7/12-2016, and I'll represent to you
 23 that my understanding is that that is a code that
 24 keeps track of the various marketing materials.
 25 And then also for the record, that

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1 Exhibit 85, it was produced under Bates stamp
 2 SEC_01_0026976.
 3 MR. SCHMIDT: Thank you.
 4 BY MR. BENSON:
 5 Q I have a question for you, Mr. Walczak.
 6 Do you have any idea as to what the legend at the
 7 top of Exhibit 85 which reads "for registered
 8 investment professional use only. Not for retail
 9 distribution" means?
 10 A I will speculate, again not knowing for
 11 certain the technical definition of that, but it
 12 appears to me to mean that this should not be
 13 used for a presentation to a retail shareholder.
 14 Q Okay. And if you were to compare
 15 Exhibit 85 to Exhibit 87, Exhibit 87 being the
 16 marketing deck for the hedged commodity strategy
 17 fund, correct?
 18 A Yes.
 19 Q Do you know why the Catalyst hedged
 20 commodity strategy fund does not have that
 21 legend?
 22 A No.
 23 Q Would it surprise you if you learned
 24 that there are documents on the Catalyst website,
 25 that I note is not password protected, where

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1 members of the public, retail investors, could go
 2 and download Exhibit 85 even though the
 3 presentations contain this legend for "Registered
 4 investment professional use only. Not for retail
 5 distribution."
 6 A If you're asking me if I'm aware of
 7 that --
 8 Q Are you aware of that?
 9 A -- I am not aware of that.
 10 Q Okay. Separate and apart of whether
 11 you're aware of it, would it surprise you if that
 12 was indeed the case?
 13 A I haven't given it any thought. I have
 14 no bias by which I could tell you I am surprised
 15 or not surprised.
 16 Q Okay. So it would not surprise you if
 17 a retail investor could go to the Catalyst
 18 website and download and view a report that
 19 specifically says "not for retail distribution"?
 20 A Again, I have no idea whether or not
 21 that's good, bad, or indifferent.
 22 I don't go to the Catalyst website. I
 23 don't control documents. So I have no opinion.
 24 1 BY MR. WASSERMAN:
 25 Q Have you ever visited the Catalyst

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1 website?
 2 A Infrequently to check my account.
 3 Q What account?
 4 A My Catalyst mutual fund account. My
 5 personal investment in Catalyst funds.
 6 Q Do you need a log-in for that?
 7 A Yes.
 8 Q Okay. Are you aware of there being a
 9 publically available Catalyst funds website?
 10 A Yes.
 11 Q Have you ever been to that?
 12 A Yes. That same -- same site.
 13 Q Okay. Are you aware -- is there a page
 14 on that site dedicated to your fund?
 15 A Dedicated to my fund? I'm not sure.
 16 Q Like can you click a hedged future
 17 strategies fund link that brings you to a page
 18 that describes your fund?
 19 A I don't know.
 20 Q Are you aware of there being literature
 21 about your fund on the website?
 22 A Yes.
 23 Q Are you aware of what literature is on
 24 the website?
 25 A I can't quote to you what's there, but

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1 I know it's our PDF documents as I go to log-in
 2 on the account side.
 3 Q But before you actually log in?
 4 A Yes.
 5 Q Documents that are publically
 6 available?
 7 A It would appear so, yes.
 8 Q And have you ever, out of curiosity,
 9 because it's your fund, clicked on those
 10 documents to see what they say?
 11 A Once or twice in the past four or five
 12 years. I can vaguely recall doing it.
 13 Q Do you recall what documents they were?
 14 A No.
 15 BY MR. BENSON:
 16 Q How many shares of the hedged future
 17 strategy fund do you hold?
 18 A I don't know.
 19 Q More than five?
 20 A Yes.
 21 Q More than 5,000?
 22 A No.
 23 Q Okay. How many shares of the hedged
 24 commodity fund do you share -- do you hold?
 25 A I don't know.

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1 Q More than five?
 2 A I can -- if you want, I can tell you
 3 dollar values? I just don't know shares.
 4 Q That's fine.
 5 A Sure. A million dollars in hedged
 6 commodity.
 7 Q Okay. And how much is the NAV of your
 8 holdings in the hedged futures?
 9 A Well, the NAV, my account balance -- I
 10 don't know. It's probably --
 11 Q Or how much did you invest? It may be
 12 easier. How much did you invest in futures?
 13 A Over a million dollars.
 14 Q Okay.
 15 BY MR. WASSERMAN:
 16 Q Sorry. There was a little to unpack
 17 there.
 18 I think David's initial question was:
 19 How much you currently own, right?
 20 MR. BENSON: Right.
 21 BY MR. WASSERMAN:
 22 Q Right. So what's the dollar amount
 23 that you currently own in the hedged futures
 24 fund?
 25 A I'd have to guess at it, but it's

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1 somewhere around a million dollars.
 2 Q So a million in both the hedged futures
 3 and the hedged commodity?
 4 A Yes.
 5 MR. BENSON: So two million total.
 6 BY MR. WASSERMAN:
 7 Q Did you -- were you invested in the
 8 hedged futures fund upon conversion of the '40
 9 Act fund?
 10 A I think so. Yes. In fact, I'm sure I
 11 was because I had interest in the Harbor fund,
 12 and that interest got carried over.
 13 Q What was the value of that interest
 14 that got carried over from Harbor into the mutual
 15 fund?
 16 A No recollection at all.
 17 Q Ballpark?
 18 A Honestly don't remember.
 19 Q Okay. Do you recall how much of the
 20 hedged futures fund you owned at the beginning of
 21 2016?
 22 A No.
 23 Q Was it the -- was it your most valuable
 24 asset at the beginning of 2016?
 25 A I don't remember that either.

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1 BY MR. SCHMIDT:

2 Q Would it be easy to figure out just by
3 logging into your account and see -- can you
4 historically look at what the value was in
5 January of 2016?

6 A I think there might be statements
7 there.

8 Q Okay.

9 A But I own it in several different
10 vehicles, brokerage firm, direct with Catalyst,
11 retirement accounts so...

12 Q Okay. But you could figure it out if
13 you had to?

14 A Sure.

15 Q Okay.

16 BY MR. WASSERMAN:

17 Q Well, you've communicated to people at
18 Catalyst that -- outside Catalyst that you're
19 heavily invested in your own fund, correct?

20 A Correct. It's -- the SAI is
21 participate of the prospectus so I report that.
22 (Reporter clarification.)

23 THE REPORTER: I'm sorry. Part of
24 prospectus, and then what's -- prospectus. And
25 then what did you say?

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1 THE WITNESS: SAI.

2 THE REPORTER: Is part of the
3 prospectus, and then you said words, other words?

4 MR. SCHMIDT: "And I report that" is
5 what I think he said.

6 THE REPORTER: "And I report that"?
7 Okay. Thank you.

8 MR. SCHMIDT: Is that accurate?

9 THE WITNESS: Yes.

10 BY MR. WASSERMAN:

11 Q But sitting here today, you have no
12 recollection of approximately how much the value
13 of that holding was in the beginning of 2016?

14 A That's correct. I have no
15 recollection.

16 BY MR. SCHMIDT:

17 Q Can you explain what an SAI is?

18 A I guess the short answer is no.

19 Q Okay.

20 A , but I think that's an acronym for
21 some sort of document that provides information
22 on portfolio manager holdings within wide ranges.

23 Q Okay. Have you ever heard the phrase,
24 "statement of additional information"?

25 A There you go. That's SAI.

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1 Q Okay. That's what you're talking
2 about?

3 A Yes.

4 Q Okay. All right. Do you know what the
5 Mutual Funds Series Trust is?

6 A If someone asked me to explain what
7 that is, I don't feel I could give an adequate
8 explanation.

9 Q You've heard the term before?

10 A Yes.

11 Q Okay. What is your understanding, as
12 best as you can explain it? Even realizing it's
13 going to fall short of perfect, what is your
14 understanding?

15 A I don't know where to start.

16 Q Do you have an understanding of what
17 the Mutual Fund Series Trust is?

18 A It's certainly a -- an entity
19 associated with a family of mutual funds.

20 Q The Catalyst family of mutual funds?

21 A I think so.

22 Q And why do you think that?

23 A I've heard the term.

24 Q In what context?

25 A In the context of being some entity

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1 that -- again, I'm at a loss for words. It's

2 related in some way to the mutual funds. It's
3 a -- a structure of some sort under which mutual
4 funds exist.

5 Q Okay. Do you know whether there is a
6 board of trustees for the Mutual Funds Series
7 Trust?

8 A Yes.

9 Q Okay. Do you know who is on the board
10 of trustees?

11 A I couldn't name them for you, no, other
12 than I know that Mr. Szilagyi is on the board.

13 Q Okay. So he's one?

14 A Yes.

15 Q Okay. Do you know anybody else who's
16 on the board?

17 A I don't recall any names.

18 Q Do you know what role the board plays?

19 A I only know from experience in business
20 the role that boards in general play. So they're

21 providing -- representing shareholders in
22 providing oversight for whatever the Mutual Funds
23 Series Trust does or is.

24 Q Do you know what a 15C submission is?

25 A No.

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1 Q You've never heard that term before in
2 your life?
3 A I believe I may have an outstanding
4 e-mail from Mr. Amhrein asking for some input on
5 that, but that would be the first time I've heard
6 it, and I don't know what it is.
7 MR. BENSON: Are you familiar with
8 Section 15C, the Investment Company Act of 1940?
9 THE WITNESS: No.
10 BY MR. SCHMIDT:
11 Q To your knowledge, have you ever
12 drafted, reviewed, or approved any portion of a
13 15C submission to the Mutual Fund Series Trust
14 board?
15 A I have provided commentary to the board
16 before. I have not heard it designated a 15C
17 document prior.
18 Q Written commentary or an oral
19 presentation?
20 A Written.
21 Q Okay.
22 A Actually both, but written more is the
23 periodic commentary that I provide. I think it's
24 quarterly.
25 BY MR. BENSON:

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1 Q Let's take a step back since I don't
2 want you to focus on the terminology of 15C
3 process.
4 Are you familiar with the concept that
5 the board of trustees of Mutual Fund Series Trust
6 needs to review and approve the investment
7 management agreement governing Catalyst
8 management of the futures fund?
9 A I think so. You know, I am not
10 familiar with those terms, but I believe that the
11 board has to approve the advisor of a fund of --
12 Q Okay.
13 A Yeah.
14 Q And they -- the board of trustees has
15 to approve that advisor periodically. For
16 instance, it can't approve an advisor in 1990 and
17 have that advisor stay in place in perpetuity,
18 right?
19 A Well, I'll believe you.
20 Q Well, no. I'm asking you if you know.
21 A I don't know.
22 Q You don't know. Okay.
23 So you don't know whether there's
24 periodic renewal process or anything like that
25 regarding who will be the advisor to a mutual

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1 fund, right?
2 A Yeah. I'm completely unfamiliar with
3 that process.
4 Q Okay.
5 BY MR. SCHMIDT:
6 Q You mentioned certain written
7 commentary that you provide quarterly, right?
8 A Yes.
9 Q Okay. Set that aside. Any other
10 written materials, to your knowledge, that you
11 have drafted, reviewed, or approved that have
12 gone to the Mutual Fund Series Trust board?
13 A I believe that prior to the conversion
14 of the fund, I made a presentation to the board.
15 Q Okay.
16 A , but I don't know if that presentation
17 has been -- what's become of it, but I did make a
18 presentation to the board.
19 Q That was a one-time presentation?
20 A Yes.
21 Q Okay. So we have a presentation, and
22 then we have written commentary that you provide
23 quarterly.
24 Anything else, to your knowledge, that
25 you provided in writing or that is provided in

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1 writing that you had a hand in drafting,
2 reviewing, or approving that got sent to the
3 board?
4 A No.
5 Q Okay. Tell me about this written
6 commentary that you provide quarterly.
7 A So there's a form that has five parts
8 to it, two parts of which are related to fund
9 performance and -- performance for the quarter
10 and commentary on the following quarter or
11 expectation, market conditions, et cetera, that I
12 fill in.
13 There is another, I think, three more
14 parts that are related to marketing distribution
15 that -- so I fill in my part and send it back to
16 Catalyst.
17 Q Okay. Who do you send it back to at
18 Catalyst?
19 A I don't -- don't recall. Whoever sent
20 it to me.
21 Q And the only two sections that you
22 update or change are performance for the previous
23 quarter and outlook for the upcoming quarter?
24 A Yes.
25 Q Okay. Have you ever attended a meeting

<p style="text-align: right;">Page 217</p> <p>1 of a Mutual Fund Series Trust board?</p> <p>2 A Yes.</p> <p>3 Q How many?</p> <p>4 A I think two.</p> <p>5 Q In person or on the phone?</p> <p>6 A In person.</p> <p>7 Q Any on the phone?</p> <p>8 A Yes. It was probably one on the phone.</p> <p>9 And I believe there was also a phone call with a</p> <p>10 portion of the board.</p> <p>11 Q Okay. So one of the in-person</p> <p>12 meetings, I assume, is the presentation you gave</p> <p>13 prior to conversion from the Harbor fund to the</p> <p>14 Cat- -- or the futures fund; is that correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. When is the other in-person</p> <p>17 meeting that you attended?</p> <p>18 A It was relatively recently. Let me try</p> <p>19 and pin down the date in my mind. I think it was</p> <p>20 sometime this year. I'm pretty sure it was that</p> <p>21 recent. So if there was a board meeting --</p> <p>22 Q Sometime within the last six months?</p> <p>23 A Oh, definitely. It was calendar '18.</p> <p>24 Q That's good enough.</p> <p>25 A Yeah.</p>	<p style="text-align: right;">Page 219</p> <p>1 attended where you gave the presentation -- so</p> <p>2 the purpose of your attendance is to give the</p> <p>3 presentation.</p> <p>4 Did you have any other role in that</p> <p>5 meeting other than giving that presentation?</p> <p>6 A No.</p> <p>7 Q Okay. Do you -- who else was in</p> <p>8 attendance other than the board members? Do you</p> <p>9 remember?</p> <p>10 A I don't recall if there were any</p> <p>11 non-board members there because certainly at the</p> <p>12 time I was not familiar with who was and who</p> <p>13 wasn't so...</p> <p>14 Q Okay. Do you remember what the outcome</p> <p>15 of the meeting was?</p> <p>16 A The board approved the conversion of</p> <p>17 the Harbor fund to the hedged futures strategy</p> <p>18 fund.</p> <p>19 Q Did they ask any questions?</p> <p>20 A There were some questions during the</p> <p>21 presentation.</p> <p>22 Q Do you remember what they were?</p> <p>23 A No.</p> <p>24 Q The other in-person meeting that you</p> <p>25 attended, what was the purpose of your</p>
<p style="text-align: right;">Page 218</p> <p>1 Q Okay. Those are the only two in-person</p> <p>2 meetings you've ever attended at the Mutual Fund</p> <p>3 Series Trust board?</p> <p>4 A That's -- that's the best I can</p> <p>5 remember, that's right. Yes.</p> <p>6 Q Okay. And then the meeting you</p> <p>7 attended on the phone with the full board, when</p> <p>8 was that?</p> <p>9 A That one, I don't remember exactly when</p> <p>10 that was. It was not -- it was not within the</p> <p>11 last six months. It was probably not within the</p> <p>12 last year. But my memory is very foggy on when</p> <p>13 that was.</p> <p>14 Q Okay. And what about the meeting on</p> <p>15 the phone with the portion of the board?</p> <p>16 A So that was somewhere in the vicinity</p> <p>17 of -- it was in first quarter of 2017, for sure.</p> <p>18 Q Do you know if it was before or after</p> <p>19 the drawdown that occurred in February?</p> <p>20 A It was either during or after because</p> <p>21 that was the subject of the call.</p> <p>22 Q Okay. So your best guess is mid to</p> <p>23 late February of 2017?</p> <p>24 A Yes.</p> <p>25 Q Okay. The initial meeting that you</p>	<p style="text-align: right;">Page 220</p> <p>1 attendance?</p> <p>2 A To provide a general update to the</p> <p>3 board on the fund and its operation.</p> <p>4 Q Was there some event that caused you to</p> <p>5 provide that update?</p> <p>6 A No.</p> <p>7 Q Nothing out of the order?</p> <p>8 A No.</p> <p>9 Q Do you remember what you said?</p> <p>10 A I described some of the activities or</p> <p>11 the operation to fund in 2017, the difficulties</p> <p>12 we had, some of the increased risk metrics that</p> <p>13 we had put in place, and processes that we put in</p> <p>14 place, and my outlook for the coming year.</p> <p>15 Q Did you have a presentation,</p> <p>16 PowerPoint, or any written materials for that?</p> <p>17 A No. No.</p> <p>18 Q So you didn't have anything written</p> <p>19 that you were reading off of or referring to?</p> <p>20 A No.</p> <p>21 Q Okay. And then the meeting that you</p> <p>22 attended on the phone with the full board, do you</p> <p>23 remember what the point of that meeting was?</p> <p>24 A As far as I recall, it was a routine</p> <p>25 update. It was prior to the drawdown, and so it</p>

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1 was a routine update.
 2 Q So prior to December 2016?
 3 A Yes, pretty sure.
 4 Q Okay. Do you remember if you had a
 5 presentation or anything at that point?
 6 A No. That was a phone call so --
 7 Q I'm sorry. I meant that either got
 8 sent to them that they could look at, as you were
 9 talking, or that you're reading off during the
 10 phone call?
 11 A No.
 12 Q Just so the record is clear, I think
 13 the question was: Do you remember, and you said
 14 no. So is it, no, there isn't any, or you don't
 15 remember?
 16 A Well, both. I don't remember there
 17 being one, and I'm fairly sure there was not.
 18 Q Okay. Do you remember if there was
 19 any -- so let me go back. Actually the one that
 20 occurred within the last six months, where you
 21 there in person, was there any decision made by
 22 the board at that time, to your knowledge?
 23 A I don't know if there was a decision on
 24 the table. So, no, to my knowledge I am not
 25 aware of any decision.

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1 Q Okay. And what about the one you
 2 participated on the phone and gave the update?
 3 Do you know of any sort of decision that was
 4 pending at that time?
 5 A No.
 6 Q And then the last one where you had
 7 a -- you participated by phone with a portion of
 8 the board in mid to late February 2017, what did
 9 you say then?
 10 A I actually don't recall speaking at
 11 that one.
 12 I was on the call with Mr. Szilagyi,
 13 and he did all the speaking, is my recollection.
 14 Q Did you get any questions?
 15 A No. Surprisingly not that I recall.
 16 BY MR. BENSON:
 17 Q Why was it surprising to you that you
 18 didn't receive any questions during that call?
 19 A Well, because I felt like perhaps the
 20 board would have some specific questions for me.
 21 However, they had more questions for Mr.
 22 Szilagyi.
 23 Q Do you know who Mr. Tieberiu Weisz is?
 24 A No.
 25 Q Do you know who Dr. Bert Pariser is?

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1 A That sounds like a name from the board.
 2 (Reporter clarification.)
 3 BY MR. BENSON:
 4 Q Tobias Caldwell?
 5 A Maybe another board member.
 6 Q Okay. Do you know -- when you were
 7 participating telephonically by this partial --
 8 this meeting that was attended by a portion of
 9 the board, do you know whether Mr. Pariser or Mr.
 10 Caldwell --
 11 A I have no recollection of who was on
 12 the phone.
 13 Q And just so we've got it, Dr. Bert
 14 Pariser is B-e-r-t P-a-r-i-s-e-r; Tieberiu Weisz
 15 is T-i-e-b-e-r-i-u W-e-i-s-z; and Tobias Caldwell
 16 is T-o-b-i-a-s C-a-l-d-w-e-l-l.
 17 Just so I'm clear, you've identified
 18 two in-person meetings and then two phone calls,
 19 one with the full board and one with a portion of
 20 the board, correct, Mr. Walczak?
 21 A That's correct.
 22 Q I just wanted to make sure that we are
 23 getting the totality of your attendance at either
 24 in-person or telephonic meetings with the Mutual
 25 Fund Series Trust board.

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1 Did -- the meetings that you
 2 identified, did those all touch upon the futures
 3 fund?
 4 A Yes.
 5 Q Okay. It's correct that you also
 6 participated in a telephonic meeting with the
 7 full board in connection with the approval of the
 8 commodity fund; isn't it?
 9 A I don't recall that, no.
 10 Q You don't?
 11 A No.
 12 Q Okay. So am I just -- to make sure I'm
 13 clear, your recollection is that you attended two
 14 board meetings in person, one telephone call with
 15 the full board and one telephone call with a
 16 portion of the board?
 17 A Correct.
 18 Q And that's the totality of your
 19 interaction with the Mutual Fund Series Trust
 20 Board of Trustees?
 21 A That's I recall.
 22 (Reporter clarification.)
 23 BY MR. SCHMIDT:
 24 Q I'll show you what's been marked as
 25 Exhibit 110.

<p style="text-align: right;">Page 225</p> <p>1 (SEC Exhibit No. 110 was 2 marked for identification.) 3 THE WITNESS: Can we -- am I reading 4 the time right? 2:30? 5 MR. ZILIAK: Yes. 6 THE WITNESS: Can we take a quick break 7 before the market closes? I just want to check 8 in real quick. 9 (A brief recess was taken.) 10 BY MR. SCHMIDT: 11 Q Let's go back on the record at 2:55 12 p.m. 13 Mr. Walczak, as before, during the 14 break, you did not have any substantive 15 discussions with either the staff of the SEC or 16 CFTC during the break; is that correct? 17 A Correct. 18 Q So I think right before the break I 19 handed you what's been marked as SEC Exhibit 110; 20 is that correct? 21 A Correct. 22 Q Okay. Have you ever seen this document 23 before? 24 A I don't recall seeing it, no. 25 Q Okay. Do you know what this kind of</p>	<p style="text-align: right;">Page 227</p> <p>1 A Yes. 2 Q And the particular fund at issue is the 3 Catalyst Hedged Futures Fund, right? 4 A Yes. 5 Q And the purpose of the document, at 6 least it states in the title, is Proposed 7 Approval of Advisory Agreement. Do you see that? 8 A Yes. 9 Q Okay. And so it identifies the futures 10 fund. It identifies the advisor also as 11 Catalyst, right? 12 A Yes. 13 Q Do you see all that? 14 A Yes. 15 Q So then flip back to the section about 16 Mr. Szilagyi. 17 And you see it has two paragraphs about 18 him. I'll looking at the first paragraph. 19 A Yes. 20 Q Do you see that? 21 A Yes. 22 Q And it says, "Mr. Szilagyi assists 23 David Miller on the portfolio management of the 24 funds on a macro level." Do you see that? 25 A Yes.</p>
<p style="text-align: right;">Page 226</p> <p>1 document is? 2 A No. 3 Q Never seen anything in this format 4 before? 5 A No. 6 Q So if you could -- I don't think it has 7 page numbers. 8 So I'm looking at -- look at -- I think 9 it's the fifth page. It has in the bottom 10 right-hand corner 7523 as a number. 11 A Yes. 12 Q Do you see that? 13 A Yes. 14 Q And so this has a list of 15 individuals -- of individuals and a description 16 next to them, right? 17 A Yes. 18 Q Okay. And you see Mr. Szilagyi. You 19 recognize his name? 20 A Yes. 21 Q And so -- I'm sorry. Let's go back to 22 the first page, just so the record is clear. 23 This is -- it says at the top "Trust" 24 and the name of the trust is Mutual Fund Series 25 Trust, right?</p>	<p style="text-align: right;">Page 228</p> <p>1 Q Okay. So since the conversion of the 2 Harbor fund to the futures fund in mid 2013, tell 3 me what Mr. Szilagyi's involvement is in managing 4 the portfolio of the futures fund. 5 A Until recently, very little, if any. 6 Q Okay. So let's go up until November of 7 2016. Describe to me what Mr. Szilagyi's 8 involvement is in managing the portfolio of the 9 futures fund. 10 A From time to time, he and I would have 11 phone conversations about the status of the 12 fund -- 13 (Reporter clarification.) 14 THE WITNESS: Status, yeah, meaning 15 just routine updates but relatively infrequently. 16 BY MR. SCHMIDT: 17 Q Okay. Other than updating him on what 18 you are doing to manage the fund, my question is 19 what about his management of the fund -- "his" 20 meaning Mr. Szilagyi's management of the fund, 21 separate from any updates you may give him about 22 what you're doing? 23 A Nothing more than suggestions at kind 24 of a macro level from time to time but very 25 little.</p>

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1 Q Can you remember any example of that
2 prior to November 2016?

3 A A few times, if the fund had a large
4 daily move in -- you know, more than a percent in
5 daily NAV, he would call and want to be updated
6 on what was going on.

7 In the summer of 2016, we had a
8 slightly longer conversation about reducing risk
9 and agreed on actions to go forward from there.

10 Q And other than those two instances --
11 well, first let's take the first one.

12 Asking you for an update as to what's
13 going on with the futures fund, do you view that
14 as managing the portfolio of the fund --

15 A No.

16 Q -- by Mr. Szilagyi?

17 A No.

18 Q All right. So let's put that aside.

19 So the other one you said was there was
20 an incident where you and Mr. Szilagyi discussed
21 whether risk had to be reduced in the summer of
22 2016; is that correct?

23 A Correct.

24 Q Okay. And you discussed options for
25 how to reduce that risk?

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1 A Alternatives.

2 Q Alternatives. Sorry. That is actually
3 a very good catch.

4 So alternatives as to how to achieve
5 that goal of reducing risk, right?

6 A Correct.

7 Q And together you collaborated and
8 decided we are going to do A, B, and C, or
9 whatever it was?

10 A Correct.

11 Q And then you executed it?

12 A Yes.

13 Q Okay. Other than that, can you think
14 of any example of when you would say Mr. Szilagyi
15 managed the portfolio of the futures fund?

16 A No, not in the time frame we are
17 talking about, no.

18 Q Okay.

19 A Prior to November of 2016.

20 Q Right.

21 A Actually prior to October, I'll say.

22 Q And same question for David Miller --
23 do you know who David Miller is?

24 A Yes.

25 Q Have you ever met him?

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1 A Yes.

2 Q Okay. Works for Catalyst?

3 A Yes.

4 Q All right. Same question, same time
5 frame. Tell me about Mr. Miller's management of
6 the portfolio of the futures fund?

7 A Same type of interaction, less so,
8 again, until late in 2016.

9 Q Okay. So we're -- for the time frame,
10 though, we are taking that off the table.

11 A Sure.

12 Q Okay. So before that, he was involved
13 in you giving him updates?

14 A No. Actually I'll revise that. He and
15 had only occasional conversations as two
16 portfolio managers talking about portfolio
17 management business. Not really anything
18 tremendously significant. Or I don't recall any
19 specific discussions about hedged futures.

20 Q Okay. So it actually is different for
21 him. You don't remember --

22 A That's correct.

23 Q I'm sorry.

24 You don't remember any management by
25 Mr. Miller of the hedged futures fund?

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1 A That's correct.

2 Q Okay. There's also a section for Mr.
3 Schoonover. Do you see that?

4 A Yes.

5 Q For the record, we spelled his name
6 correctly.

7 And you see that Mr. Schoonover is
8 responsible for research for all internally
9 managed funds. Do you see that?

10 A Yes.

11 Q Would that include the futures fund?

12 A No.

13 Q No? Okay. So give me your
14 understanding of what an internally managed fund
15 is.

16 I guess, let me step back.

17 Is it the phrase "internally managed
18 fund" that is causing you to say he's not
19 responsible for research, or is it something
20 else?

21 A No. He has just not been involved in
22 doing any research for hedged futures.

23 Q Oh, okay.

24 A That -- that was my response.

25 Q So from the time it converted up

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1 through when are you talking? What's the time
 2 frame you're talking about?
 3 A Well, it -- as far as I understand the
 4 research -- the meaning of research, he has not
 5 participated in any research on the strategy.
 6 Q Okay. So nothing --
 7 A Again, we are talking about this time
 8 frame, late 2016.
 9 Q Okay. So up until whatever -- are you
 10 comfortable with the end of November 2016?
 11 A Yes. I mean, that's -- that's what I
 12 recall.
 13 Q You recall it?
 14 A He may have been doing something that
 15 I'm unaware of, but I don't recall interacting
 16 with him on any research related to our strategy
 17 or of the fund.
 18 Q Okay. And you don't recall Ms. Rios
 19 saying, hey, I got this from Mr. Schoonover; he
 20 researched X, Y, Z for the futures fund?
 21 A I don't recall it.
 22 Q Okay. There's a section for Mr. Glass,
 23 head of operations. Do you see that?
 24 A Yes.
 25 Q So it says he provides operations and

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1 administrative services for the advisor and the
 2 funds including trade and sales reporting. Do
 3 you see that?
 4 A Yes.
 5 Q What has been his involvement in terms
 6 of providing operations and administrative
 7 services to the futures fund?
 8 A My interaction with him is around
 9 compliance, and it's more specific compliance in
 10 the sense of personal trading, recordkeeping,
 11 employee manual, Catalyst policies, that kind of
 12 compliance activity.
 13 Q Okay. So put that compliance to the
 14 side.
 15 We are talking about operations and
 16 administrative services.
 17 Are you aware of him providing any of
 18 that to the futures fund?
 19 A I don't recall any -- any strong
 20 involvement that -- of his.
 21 Q Okay. And so continuing on to Page 6
 22 which has 7524 at the bottom, do you see that?
 23 A Yes.
 24 Q Okay. It says -- I'm looking at Item 2
 25 on there. Do you see that?

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1 A Yes.
 2 Q It says that the advisor will determine
 3 the securities to be purchased for the fund, the
 4 portfolio securities to be held or sold by the
 5 fund, and a portion of the fund's assets to be
 6 held uninvested. Do you see see that?
 7 A Section 2?
 8 Q Section 2. So there's a question, and
 9 it looks like it's in bold, and then there's an
 10 answer. Do you see that?
 11 A Yes. Got it.
 12 Q Okay. So look at the second full
 13 sentence of the answer. Do you see where I'm
 14 talking, like third line down?
 15 A Yes.
 16 (Reporter clarification.)
 17 BY MR. SCHMIDT:
 18 Q Have you had a chance to look at that?
 19 A Yes.
 20 Q Okay. So tell me who at Catalyst
 21 determined what securities to be purchased for
 22 the futures fund.
 23 A I did.
 24 Q Nobody in New York?
 25 A Right. That's correct.

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1 Q Okay. And the portfolio securities to
 2 be held or sold by the fund?
 3 A I did.
 4 Q Okay. So Ed Walczak, Wisconsin, not
 5 Catalyst, New York?
 6 A Correct.
 7 Q Okay. And a portion of the fund's
 8 assets to be held uninvested?
 9 A Yes, I did.
 10 Q Also you, nobody in New York?
 11 A Correct.
 12 Q Okay. If you go to Question 3, key
 13 risks associated with the fund's investment
 14 strategy, do you see that?
 15 A Yes.
 16 Q Is this -- in your opinion, is this an
 17 accurate description of the key risks associated
 18 with the fund's investment strategy?
 19 A I'm not familiar with RIC guidelines
 20 and restrictions. So if that's included in the
 21 main risks, I don't know what those are.
 22 Q You don't know what those are?
 23 A No.
 24 Q Okay. So put that to the side. Is the
 25 rest of it accurate and complete?

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1 A Again, without knowing those, I can't
2 tell you whether it's complete.
3 Q Do you know what RIC means?
4 A R and I stand for registered and
5 investment company perhaps.
6 Q Okay.
7 BY MR. WASSERMAN:
8 Q Why would complying with a guideline be
9 a risk?
10 A I have no idea.
11 Q In your words, what are the key risks
12 of the fund's investment strategy?
13 A I think they are listed somewhere.
14 Q But in your words, what are they?
15 A If -- again, I am not going to try to
16 give you that all-encompassing description now.
17 It's likely I'll omit something.
18 Q What is -- in your view, for the
19 strategy that you've run for over a decade --
20 A Right.
21 Q -- what is the most significant risk of
22 the fund's investment strategy?
23 A Just a moment. I'll find something in
24 a moment.
25 I would describe risks as active

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1 trading. There's certainly an opportunity for
2 slippage and losses based on more active trading
3 than customary investments.
4 Q Mr. Walczak, what document are you
5 reading from?
6 A Oh, I am not reading from. I refreshed
7 my memory on what was in the prospectus, but I'm
8 using my own words.
9 Q So to clarify, in your own words, for
10 the strategy that you've run since the mid 2000s,
11 what is the most significant risk associated with
12 that strategy?
13 A The risk of unexpected volatility and
14 market movement.
15 Q Is that risk articulated in No. 3 on
16 Exhibit 110?
17 To make it easier, the answer to No. 3
18 doesn't say anything about volatility, correct?
19 A Correct.
20 It does mention, however, that this
21 fund has -- also has risks related to the assets
22 that will be kept and deposited FCMs.
23 Q But those are like fixed income --
24 A I assume that means position --
25 portfolio positions. That would be my read of

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1 that.
2 BY MR. SCHMIDT:
3 Q So for Item 3, you are not aware of
4 what's required to comply with RIC guidelines or
5 conditions; is that correct?
6 A That's right. I'm not aware of
7 those -- what's required.
8 Q Okay. So if you look at -- flip to the
9 next page -- actually at the bottom of that page
10 is No. 5. "Describe the advisor's," which is
11 Catalyst, "practice for monitoring and compliance
12 with the fund's investment limitations."
13 And the answer is, "The portfolio
14 managers have primary responsibility for
15 monitoring each fund's compliance with investment
16 limitations."
17 (Reporter clarification.)
18 BY MR. SCHMIDT:
19 Q "Portfolio managers are expected to
20 have complete understanding of the relevant
21 investment restrictions and comply with them." Do
22 you see that?
23 A Yes, I do.
24 Q Okay. "The portfolio manager is
25 provided training on the portfolio compliance

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1 restrictions and procedures prior to fund launch,
2 including development of a checklist." Do you see
3 that?
4 A Yes.
5 Q Okay. Did that training occur?
6 A I don't recall formal training. That's
7 the best answer I can give you. I don't recall
8 formal training. I do recall, again, discussing
9 the investment strategy in the portfolio.
10 Q Okay. Because you used the word
11 "formal," I'm just going to ask.
12 A Sure.
13 Q Do you recall any informal training
14 regarding investment restrictions or the fund's
15 compliance with investment limitations, anything
16 along those lines?
17 A As I said, I recall conversations with
18 various people at Catalyst to ensure I understood
19 my responsibilities. Informal telephone
20 conversations.
21 Q Would you in any sense, before this
22 conversation, today characterize that as
23 training?
24 A I would characterize it as fulfilling
25 the -- the meaning or intent of this particular

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1 answer to the question.

2 Q And who gave you this training?

3 A I do remember talking to Mr. Szilagyi
4 about it, and I remember talking to others. Not
5 specifically who.

6 Q And based on that, you feel that you
7 have all of the information that's required of a
8 portfolio manager in this section?

9 A As I read this, yes.

10 Q Okay. Where do you keep your
11 checklist?

12 A The -- I believe that's in the employee
13 compliance manual.

14 I think there -- I may be wrong, but I
15 seem to recall there -- being that kind of
16 material in there.

17 Q In the employee manual, there's a
18 checklist that --

19 A There's a compliance manual that --
20 that talks about portfolio manager
21 responsibility.

22 Q And you believe that is the checklist
23 that has to be developed prior to fund launch?

24 A Again, I don't know the requirement to
25 satisfy this. I'm just telling you my read of

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1 it.

2 Q Do you have any other checklists
3 besides this compliance checklist you're talking
4 about?

5 A I don't keep a checklist, no.

6 Q Have you ever used this checklist or
7 the checklist you're talking about?

8 A I don't recall the last time I looked
9 at it.

10 Q Okay. So would you agree that the
11 portfolio manager, which is you, has primary
12 responsibility for monitoring fund compliance?

13 A For compliance as it's -- complete
14 understanding of relevant investment restrictions
15 and comply with them, yes.

16 Q And using a checklist, and do you do
17 that or not do that?

18 A I do not use a checklist.

19 MR. BENSON: Did you ever develop a
20 checklist prior to fund launch?

21 THE WITNESS: No.

22 BY MR. SCHMIDT:

23 Q Who's Charles River Compliance?

24 A It's a third-party firm that -- I
25 believe that Catalyst uses to, as it says,

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1 monitor compliance.

2 Q What's your interaction with Charles
3 River Compliance?

4 A We get reports on attributes of -- of
5 funds' compliance with -- in other words, they
6 monitor the -- the attributes of the fund that we
7 have to stay in compliance -- as an independent
8 party, report that to us.

9 Q Do you have -- other than receiving
10 this information, do you have any interaction
11 with Charles River Compliance?

12 A No.

13 BY MR. BENSON:

14 Q How frequently do you receive those
15 reports?

16 A I believe it's quarterly.

17 Q And in what format do you receive them?

18 A I don't remember the exact document,
19 but it's an e-mail.

20 Q It's an electronic document --

21 A Yes.

22 Q -- not a paper document?

23 A Yes.

24 Q And who is it sent to from Charles
25 River?

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1 A I don't know who's on the distribution
2 list. I know I get it for my fund.

3 Q But you do get it?

4 A Yes.

5 Q And what do you do upon receiving the
6 Charles River Compliance monitoring report?

7 A I simply review it. Typically,
8 they'll -- they'll flag -- in between reports,
9 they'll flag any issues, and I don't recall that
10 happening for hedged futures. Occasionally, it's
11 happened for hedged commodities, and we take
12 action on it.

13 Q What would be an example of something,
14 say, flagged -- Charles River Compliance flagged
15 with regard to a hedged commodities fund?

16 A I believe they flag from time to time
17 the percentage of assets in the offshore holding
18 company in that fund.

19 Q Yeah. A question for you. I was
20 looking at the prospectuses.

21 Do you know why there's a Cayman
22 Islands subsidiary that's used in connection with
23 the hedged commodity fund?

24 A I think that's a regulatory requirement
25 based on the instruments we trade.

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1 Q Okay.
 2 BY MR. SCHMIDT:
 3 Q There's a regulatory requirement --
 4 what is your understanding of the requirement?
 5 A Requirement is that a '40 Act fund
 6 cannot in an onshore vehicle trade commodities
 7 futures instruments, but it can be done through
 8 an ownership of an offshore entity, and it's
 9 restricted in terms of how much of the fund's
 10 assets can be devoted to that through ownership
 11 of the offshore entity.
 12 Q And your understanding is that only
 13 applies to the commodity fund, not the futures
 14 fund, right?
 15 A That's my understanding.
 16 BY MR. WASSERMAN:
 17 Q I'm sorry. Is your understanding that
 18 the regulations says you can only do it through
 19 an offshore entity or that there's a limit to the
 20 percentage of assets that can be futures related?
 21 A Could you ask that again?
 22 Q I'll ask it more simply. I'm sorry.
 23 Is -- is it your understanding that the
 24 regulation itself explicitly references offshore
 25 entities?

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1 A My understanding is it -- it -- it says
 2 that commodity instruments cannot be traded in an
 3 onshore entity, and there's some limitation
 4 around percent of assets and possibly around use
 5 of the fund. I don't know the detail of it.
 6 Q And that if more than a certain
 7 percentage of the assets are commodities futures
 8 related that certain additional rules would
 9 apply?
 10 A I think that's correct.
 11 BY MR. SCHMIDT:
 12 Q So before you talked about a
 13 presentation you made to the Mutual Fund Series
 14 Trust Board prior to conversion. I think I found
 15 it, and I'm showing you a document to put a date
 16 on it. Okay?
 17 (SEC Exhibit No. 111 was
 18 marked for identification.)
 19 BY MR. SCHMIDT:
 20 Q And so it's a big document, but I'm not
 21 going to ask you about what's in it other than to
 22 flip to Page 28.
 23 The first page you can see is -- the
 24 date is May 13th, 2013. Do you see that?
 25 A Yes.

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1 Q And if you flip to Page 28, do you see
 2 near the bottom in italicized writing it talks
 3 about you joining the meeting?
 4 A Yes.
 5 Q You get introduced by Mr. Szilagyi, and
 6 then you review a presentation to the board?
 7 A Yes.
 8 Q Do you see that?
 9 A Yes.
 10 Q Do you believe, sitting here today,
 11 that that's what you told us about before, your
 12 first in-person attendance in a board meeting?
 13 A Yes.
 14 Q Okay. I'm going to show you what's
 15 been marked as 112, if you could let me know if
 16 that's the presentation that you made to the
 17 board.
 18 (SEC Exhibit No. 112 was
 19 marked for identification.)
 20 THE WITNESS: I believe so.
 21 BY MR. SCHMIDT:
 22 Q At this time you are Harbor Assets,
 23 L.L.C., right?
 24 A Correct.
 25 Q You don't have an assistant PM working

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1 with you?
 2 A No.
 3 Q You're the only portfolio manager?
 4 A That's correct.
 5 Q Okay. So if somebody put this together
 6 at Harbor Assets, it would have been you, right?
 7 A Yes.
 8 Q Do you remember putting it together?
 9 A Yes.
 10 Q Okay. And you remember giving the
 11 presentation?
 12 A Yes.
 13 Q If you go to Slide 7, it has a bullet
 14 point, "We are aggressive managers of risk." Do
 15 you see that?
 16 A Yes.
 17 Q And it has four sub-bullets?
 18 A Yes.
 19 Q Can you explain these to me?
 20 A They're designed to characterize risk.
 21 In other words, these are the types of risk that
 22 we're attempting to manage.
 23 Q Do you remember what you said to the
 24 board about this section?
 25 A No.

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1 Q Do you know if this is a presentation
2 you developed just for the board of trustees, or
3 did it exist before then?

4 A I definitely developed this for the
5 board of trustees.

6 Q And why do you say that?

7 A Because I recall specifically putting
8 together a presentation for that meeting.

9 Q And if you go to Slide 10, you have a
10 bullet point that just says, "Active risk
11 management." Do you see that?

12 A You'll have to give me a moment since
13 the slides are not numbered on my sheet.

14 Q They are not numbered on mine either.
15 Sorry. It's 48401 on the bottom right-hand
16 corner.

17 A Got it.

18 Q Do you remember what you said to the
19 board about active risk management?

20 A No.

21 Q In your mind, is that any different
22 than the four bullet points that were on the
23 previous slide we looked at?

24 A I can -- I believe this bullet was
25 designed to talk about risk management. The

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1 other bullets were designed to identify risks.

2 Q Okay.

3 MR. WASSERMAN: Just a brief question.

4 On Page 48398, what do you mean by
5 "absolute dollar exposure," or what did you mean
6 by "absolute dollar exposure"?

7 THE WITNESS: I don't recall.

8 MR. WASSERMAN: Does it mean anything
9 to you, sitting here today?

10 THE WITNESS: It doesn't.

11 When you asked the question, I tried to
12 think about what it might have been, and it's not
13 especially meaningful.

14 (Reporter clarification.)

15 BY MR. SCHMIDT:

16 Q So when you look at those other three,
17 extreme price movement, implied volatility spikes
18 and position leverage, those all make sense to
19 you in terms of the risks to the Harbor fund?

20 A Yes.

21 Q And absolute dollar exposure, you can't
22 figure out how that would fit into that list?

23 A I could probably start today and
24 potentially figure it out, but I don't recall
25 exactly what was said to the board about that.

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1 MR. BENSON: But I don't think that's
2 the question.

3 Do you want to -- Jake didn't you ask
4 you what you said to the board about that bullet
5 point.

6 You understand that, right?

7 THE WITNESS: Why don't you repeat the
8 question then.

9 BY MR. SCHMIDT:

10 Q Sure. Originally when we went over
11 those bullet points and then we looked at
12 aggressive risk management -- I'm sorry -- active
13 risk management, you said, well, this slide that
14 has the four bullet points are the risks that we
15 are trying to manage, and the way we do that is
16 active risk management.

17 So that's the difference between those
18 two sections? That's what you said?

19 A Yes.

20 Q Okay. And as you sit here today, when
21 you think about the Harbor fund, the first three
22 make sense to you in terms of how those are risks
23 to Harbor fund?

24 A Yes.

25 Q And the fourth one doesn't; is that

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1 correct?

2 A It's not immediately obvious to me. It
3 doesn't seem to fit in with the other three
4 exactly.

5 Q Okay. So the question to me that I was
6 asking is not what did you say to the board about
7 that fourth one.

8 I'm asking if you have any idea,
9 sitting here today, what you meant when you wrote
10 this because it's not somebody else's words; it's
11 your words, right?

12 A Yes.

13 Q Okay. Is it's your presentation?

14 A Right.

15 Q Nobody else is at the Harbor fund?

16 A Correct.

17 Q Okay. So do you have any idea what you
18 meant as an absolute dollar exposure risk to the
19 Harbor fund?

20 A No.

21 BY MR. WASSERMAN:

22 Q What does "absolute dollar exposure"
23 mean?

24 A Again, I can speculate of the meanings
25 of those words, but to Jake's question.

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1 Q You're a money -- you're a portfolio
2 manager, right?
3 A Correct.
4 MR. SCHMIDT: And they are your words?
5 THE WITNESS: Yes, they are.
6 BY MR. WASSERMAN:
7 Q What do the words "absolute dollar
8 exposure" mean?
9 A Again, I mean, I can tell you, well,
10 absolute dollar exposure might mean X, it might
11 be Y, and it might mean Z --
12 MR. BENSON: Go for it.
13 THE WITNESS: -- but I cannot tell what
14 I meant when it was written.
15 BY MR. WASSERMAN:
16 Q Is it your testimony today that you do
17 not know what the phrase "absolute dollar
18 exposure" means?
19 A No. My testimony is that I do not
20 recall --
21 Q Hold on.
22 A Did you ask me about my testimony?
23 Q That's my question right now.
24 A Okay.
25 Q Which is a yes-or-no question.

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1 I'm not trying to -- I'm just trying to
2 get a clear answer.
3 Sitting here today, do you or do you
4 not know what the phrase "absolute dollar
5 exposure" means?
6 A I do not know what it means in this
7 context when I wrote it.
8 Q I am just asking you -- pretend this
9 document doesn't exist, and I say to you, Mr.
10 Walczak, what does "absolute dollar exposure"
11 mean?
12 A I would say, "In what context are you
13 asking me that?"
14 Q In the text --
15 A What do you mean by that?
16 Q In the context of managing a portfolio
17 of dollars.
18 A All right. So --
19 Q I'm sorry. Managing a portfolio of
20 assets that are valued in dollars.
21 A Okay. So what it might mean -- if you
22 had written it down somewhere, what it might mean
23 is either a sum of exposures, long and short. It
24 might mean what could happen for a given
25 excursion in underlying markets. It might mean

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1 what -- what a portfolio manager would risk on a
2 trade. It might mean a lot of different things.
3 Q In the context of being a portfolio
4 manager of assets that have dollar value --
5 A Yes.
6 Q -- does exposure refer to a measurement
7 of risk?
8 A Typically, yes.
9 Q So does absolute dollar exposure mean
10 absolute dollars at risk?
11 A It could mean that, yes.
12 Q What else could it mean?
13 A It -- it could mean that you're talking
14 about the amount of capital that you'd be willing
15 to lose.
16 Q Well -- well, capital is just another
17 word for dollars, right?
18 A Sure.
19 Q Okay. So absolute dollar exposure
20 could mean total number of dollars at risk,
21 right?
22 A It could mean that, yes.
23 Q What else could it mean?
24 A It could mean dollars at risk in a
25 particular trade. It could mean dollars at risk

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1 in a particular part of the strategy.
2 Q But is it -- in all senses, it refers
3 to some measurement of dollars at risk of being
4 lost, correct?
5 A Yes. Yeah. Sure.
6 Q Okay.
7 A Again, to complete my answer to a
8 number of these questions, I don't recall in what
9 context of the many we've just discussed that
10 this was presented to the board.
11 It's the one element that does not leap
12 out at me among the four.
13 BY MR. BENSON:
14 Q Are you aware of anything that could
15 refresh your recollection as to what you meant
16 when you wrote that bullet point?
17 A No.
18 Q So sitting here today, you can't think
19 of anything that could make you -- help you
20 remember, right?
21 A No.
22 Q Okay.
23 BY MR. WASSERMAN:
24 Q But you also don't know of anything
25 else that could mean besides a measurement of --

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1 of dollars at risk of being lost?
 2 A In a variety of different context, yes.
 3 Q Well, whether it's a particular option
 4 or the portfolio as a whole?
 5 A Right.
 6 Q It's some measurement of dollars at
 7 risk of being lost?
 8 A Yes.
 9 BY MR. BENSON:
 10 Q So going back to Exhibit 111, Mr.
 11 Walczak, these are minutes that reflect
 12 statements that you and Mr. Amhrein stated to the
 13 board of trustees of Mutual Fund Series Trust,
 14 right, on Pages 28 and 29?
 15 A These are the board -- minutes of the
 16 board meeting of that meeting.
 17 Q That's my question. Right? Is that
 18 right?
 19 A I don't know what they are. I've not
 20 seen this before today.
 21 Q Okay. Well, then you can actually put
 22 the document down.
 23 Do you remember ever -- put it down.
 24 Do you remember advising the board of
 25 trustees at Mutual Fund Series Trust that you,

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1 through Harbor Financial, would continue to
 2 manage separately manage accounts?
 3 A I don't recall specifically advising
 4 the board of that fact.
 5 I did specifically advise Mr. Szilagyi
 6 and Catalyst of that fact.
 7 Q Right. Okay. And I just want to go
 8 back. I know we talked about the fact that you
 9 continued to advise separately managed accounts
 10 in 2013 until a good portion of 2015, right?
 11 A Yes.
 12 Q As part of those separately managed
 13 accounts, did you manage any accounts that were
 14 either held by you, your wife, or any vehicles
 15 that were majority owned by you or your wife?
 16 A I believe I did, yes.
 17 Q Okay. And did you -- did you discuss
 18 that specific point to anyone at Catalyst, that,
 19 in addition to the general concept of your
 20 decision to continue to advise separately managed
 21 accounts, that you would also be managing
 22 separately managed accounts that you had
 23 beneficial ownership of?
 24 A Yes.
 25 Q Okay. And to whom did you disclose

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1 that?
 2 A Rob Glass.
 3 Q Okay. And so it was significantly
 4 important, in your mind, to make sure that
 5 Catalyst was aware of that, right?
 6 A Yes.
 7 Q And why did you feel it was important
 8 to tell Catalyst about that?
 9 A My recollection is it was part of
 10 Catalyst's compliance requirements --
 11 Q Okay.
 12 A -- to disclose personal account
 13 investment.
 14 Q Have you heard of the concept of
 15 conflict of interest?
 16 A Yep.
 17 Q Would you agree that there's a
 18 potential conflict of interest where you are
 19 managing multiple clients' assets and, for
 20 instance, you have to figure out, you know, how
 21 do we allocate trades, how do we order trades,
 22 and things like that? Right?
 23 A Yes.
 24 Q Okay. And was that one of the things
 25 that was going through your mind as to why you

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1 reached out to Catalyst to make sure they were
 2 crystal clear that you were not only going to be
 3 managing the futures fund but you also had these
 4 separately managed accounts to be managing?
 5 A Sure. And just to be clear on that,
 6 the issue of trade allocation across individually
 7 managed accounts is a well-documented requirement
 8 for that group of accounts, and that did not
 9 change.
 10 And the group of accounts was not
 11 specifically managed -- in other words, Catalyst
 12 did not explicitly join that group of accounts.
 13 Q Right.
 14 A Because the strategies were done
 15 slightly differently for those individual
 16 accounts.
 17 Q Right. And trade allocation,
 18 obviously, is just one piece of the myriad of
 19 conflicts that could exist actually, right?
 20 A Sure. Sure.
 21 Q So if you look at Exhibit 133, which is
 22 the prospectus for the hedged futures strategy
 23 fund.
 24 MR. ZILIAK: I'm sorry. We have a lot
 25 of exhibits over here now.

<p style="text-align: right;">Page 261</p> <p>1 THE WITNESS: 133 did you say?</p> <p>2 BY MR. BENSON:</p> <p>3 Q Um-hum. It's the prospectus dated</p> <p>4 August 29th, 2013.</p> <p>5 MR. ZILIAK: Sorry. We're still</p> <p>6 searching. Okay. We are good.</p> <p>7 BY MR. BENSON:</p> <p>8 Q Okay. So this is the -- this is the</p> <p>9 prospectus. This is the initial prospectus for</p> <p>10 the hedged futures fund, right?</p> <p>11 A Yes.</p> <p>12 Q And it identifies you as being the</p> <p>13 portfolio manager of the fund on Page 6 and then</p> <p>14 again on Page 20, right?</p> <p>15 A 6, check. Yes.</p> <p>16 Q Okay. And would you agree with me that</p> <p>17 on neither Page 6 nor Page 20, in this discussion</p> <p>18 of you as a portfolio manager of the fund, does</p> <p>19 the prospectus disclose that you would</p> <p>20 simultaneously be advising separately managed</p> <p>21 accounts?</p> <p>22 A Without reading the entire prospectus,</p> <p>23 I don't see it.</p> <p>24 Q Okay.</p> <p>25 A , but I have not read the entire</p>	<p style="text-align: right;">Page 263</p> <p>1 through 10 of Exhibit 133, there are additional</p> <p>2 principal investment risks that are identified.</p> <p>3 And, again, I don't see any disclosure regarding</p> <p>4 potential conflicts of interest. And I'm just</p> <p>5 wondering if you do.</p> <p>6 A I don't see any, no.</p> <p>7 Q Okay. And if you look at the risks</p> <p>8 that are disclosed in Exhibit 133, specifically</p> <p>9 on Page 4, there's a management risk that's</p> <p>10 identified, and it says, "The portfolio manager's</p> <p>11 judgment about the attractiveness, value, and</p> <p>12 potential appreciation of particular securities</p> <p>13 in which the fund invests may prove to be</p> <p>14 incorrect, and there is guarantee that the</p> <p>15 portfolio's manager's judgment will produce the</p> <p>16 desired results," right?</p> <p>17 A I see that.</p> <p>18 Q There's no discussion under that</p> <p>19 heading that there's also that the portfolio</p> <p>20 manager may favor separately managed accounts</p> <p>21 over the '40 Act fund, right?</p> <p>22 A I see no mention of that.</p> <p>23 Q Okay. So -- and I think we've probably</p> <p>24 talked about this a number of times. But just to</p> <p>25 make sure I'm clear, you were responsible for</p>
<p style="text-align: right;">Page 262</p> <p>1 prospectus in this version in some time.</p> <p>2 Q Okay. And did you -- did you review</p> <p>3 and approve the discussion of your biography in</p> <p>4 the portfolio manager sections on Page 6 and 20</p> <p>5 of the prospectus?</p> <p>6 A Yes.</p> <p>7 Q Okay. And -- and when you reviewed and</p> <p>8 approved those, you didn't ask anyone whether you</p> <p>9 needed to disclose your management of separately</p> <p>10 managed accounts, did you?</p> <p>11 A No.</p> <p>12 Q Okay. And if you look at the -- the</p> <p>13 risks that are identified in Section 133 -- I'm</p> <p>14 sorry. I'm sorry.</p> <p>15 MR. ZILIAK: I'm sorry?</p> <p>16 BY MR. BENSON:</p> <p>17 Q I'm sorry. Exhibit 133, there are</p> <p>18 principal risks of investing in the fund that</p> <p>19 begin at Page 2 and run through Page 4, correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. And tell me if I'm wrong. I</p> <p>22 don't see any disclosure of potential conflicts</p> <p>23 of interest, do you?</p> <p>24 A I don't see any, no.</p> <p>25 Q Okay. And then, if you look at Page 8</p>	<p style="text-align: right;">Page 264</p> <p>1 formulating the futures fund's investment</p> <p>2 policies, right?</p> <p>3 A What do you mean by "investment</p> <p>4 policies"?</p> <p>5 Q The bands in which you would be</p> <p>6 trading, for instance.</p> <p>7 A Well, I'm certainly responsible for</p> <p>8 selecting trades and positions, yes.</p> <p>9 Q So you were responsible for making</p> <p>10 ongoing investment decisions on behalf of the</p> <p>11 fund, right?</p> <p>12 A Yes.</p> <p>13 Q And you were responsible for engaging</p> <p>14 in portfolio transactions, right?</p> <p>15 A Yes.</p> <p>16 Q As of August 29th, 2013, you were not</p> <p>17 an employee of Catalyst Capital Advisors, right?</p> <p>18 A That is correct.</p> <p>19 Q In fact, you have never been an</p> <p>20 employee of Catalyst Capital Advisors, right?</p> <p>21 A As I understand the definition of</p> <p>22 employee, I have not been.</p> <p>23 Q Okay. Can you look at Page 20 of</p> <p>24 Exhibit 133 please?</p> <p>25 Would you agree -- under Management of</p>

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1 the Fund, you'll see advisor. The -- the fourth
2 and final on the heading Advisor says, "Under the
3 terms of the management agreement, Catalyst
4 Capital Advisors, L.L.C. is responsible for
5 formulating the fund's investment and policies,
6 making ongoing investment decisions, and engaging
7 in portfolio transactions."

8 Do you believe that that sentence is
9 accurate and consistent with your understanding
10 of how the fund was actually managed?

11 A I do.

12 Q And why is that?

13 A I don't see anything in here that's
14 incorrect.

15 Q Okay. So it was Catalyst Capital
16 Advisors, L.L.C., who had those responsibilities?

17 A Yes.

18 Q Okay. And how does Catalyst Capital
19 Advisors' responsibilities as to those three
20 functions compare to your responsibilities for
21 those three functions?

22 A Catalyst engaged me to execute their
23 responsibilities in that regard.

24 Q So are you telling me that your
25 understanding is that Catalyst had the

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1 responsibilities and delegated them to you?

2 A Yes.

3 Q And where is that delegation disclosed
4 on Page 120 or, frankly, anywhere in Exhibit 133?

5 A If you give me a moment, I'll see if I
6 can find it.

7 Q Please.

8 A On Page 6 it says that I am a portfolio
9 manager of the advisor and serve as the fund's
10 portfolio manager.

11 (Reporter clarification.)

12 THE WITNESS: Manager of the advisor
13 and serve as the fund's portfolio manager.

14 And, similarly, on Page 20, it says
15 that I am a portfolio manager of the advisor and
16 have -- have been responsible for the day-to-day
17 management of fund's portfolio and its
18 predecessor fund since its inception.

19 BY MR. BENSON:

20 Q And you would agree that -- go on.
21 Sorry.

22 A Since its inception in 2005.

23 Q And you would agree that in both of
24 those descriptions of you as the portfolio
25 manager of the advisor --

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1 (Reporter clarification.)

2 BY MR. BENSON:

3 Q Your description as portfolio manager
4 of the advisor, Exhibit 133 does not disclose
5 that you are an independent contractors, correct?

6 A It does not disclose that, no.

7 Q Okay. And it also does not disclose
8 that your relationship with Catalyst Capital
9 Advisors, L.L.C., is governed by a portfolio
10 manager agreement, correct?

11 A Correct. I don't see anything in there
12 that discloses that.

13 Q Okay. Do you know what the difference
14 between an advisor and a subadvisor is?

15 A Vaguely.

16 Q Tell me what your understanding is
17 please.

18 A A subadvisor is a similar -- similar to
19 advisor, however, it is subordinate to an advisor
20 on the basis of some sort of agreement but has
21 responsibility to do many of the same things as
22 an advisor does.

23 Q Okay. And are you aware of any
24 restrictions on an advisor contracting with a
25 subadvisor without consent of a board of trustees

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1 or shareholder approval?

2 A No, I'm not aware.

3 Q Okay. I'd like you to go -- I'd like
4 you to look at Page 8 of Exhibit 133 please.

5 If you see, there's the heading Manager
6 of Manager's Order. Do you see that?

7 A Yes.

8 Q It says, "The fund in Catalyst Capital
9 Advisors, L.L.C., the fund's investment advisor,
10 have requested or intend to request that the
11 Securities and Exchange Commission grant an order
12 that allows the advisor to hire a subadvisor or
13 subadvisors without shareholder approval, defined
14 as 'the order.' Until that" --

15 (Reporter clarification.)

16 BY MR. BENSON:

17 Q "'The order.' Until that order is
18 granted, shareholder approval is required if the
19 advisor hires a subadvisor or subadvisors.
20 However, there is no guarantee that such an order
21 will be issued." Do you see that?

22 A Yes.

23 Q Do you have any understanding of what
24 that means?

25 A No.

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1 Q Okay. Are you aware of Catalyst ever
2 seeking approval from the board of trustees of
3 Mutual Fund Series Trust to engage you as a
4 portfolio manager?
5 A No.
6 Q Okay. Are you aware of any instances
7 where Catalyst Capital Advisors, L.L.C., sought
8 shareholder approval to engage you as a portfolio
9 manager?
10 A No.
11 (SEC Exhibit No. 113 was
12 marked for identification.)
13 BY MR. BENSON:
14 Q Okay. I'm handing you Exhibit 113.
15 And as far as I am aware, they have -- Catalyst
16 has not provided a copy of Exhibit 113 that bears
17 your signature.
18 Are you -- do you recognize Exhibit
19 113?
20 A I do.
21 Q Okay. And do you recall ever signing
22 any version of Exhibit 113?
23 A Yes.
24 Q Okay. Do you have a copy of Exhibit --
25 of a signed version of Exhibit 113?

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1 A Yes.
2 Q Okay. We'll make a request for it, and
3 we'll get a copy of it.
4 What is your understanding of what
5 Exhibit 113 accomplishes?
6 A It's -- it defines the relationship
7 between myself and Catalyst under which I provide
8 portfolio management services.
9 Q Okay. And as far as you're aware, has
10 this -- was this agreement ever presented to the
11 Mutual Fund Series Trust Board of Trustees for
12 review and approval?
13 A I don't know.
14 Q Okay. So you have no knowledge,
15 correct?
16 A Correct.
17 Q And do you have any knowledge of this
18 portfolio manager agreement ever being attached
19 to any SEC filings for shareholder review and
20 inspection?
21 A I don't have any knowledge of that.
22 Q Okay. And did you ever -- did you ever
23 discuss with Catalyst whether you should be
24 identified as a subadvisor to the hedged futures
25 strategy fund?

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1 A I think Jerry and I discussed early on,
2 as we entered into this arrangement, whether
3 myself and/or my business would come onboard as a
4 subadvisor.
5 Q Okay. And tell me about that
6 discussion please.
7 A Again, I'm not familiar with some of
8 these areas. So I inquired of Mr. Szilagyi what
9 would my role be, and he suggested that I could
10 provide contract services like this or I could
11 register my business as a subadvisor.
12 I asked him a little bit about what
13 that meant, and I made the determination that I
14 preferred to simply be a contract employee.
15 Q So what did Mr. Szilagyi tell you when
16 he was walking through the various options
17 available to you?
18 A Well, I don't recall great detail other
19 than there would be considerably greater
20 regulatory and compliance requirements of a
21 subadvisor than an individual as a contractor,
22 and that was -- that was a key factor in my
23 decision.
24 Q Right. It would have been more
25 onerous, more expensive for you to be engaged as

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1 a subadvisor, correct?
2 A Certainly onerous.
3 Q Okay. More expensive too, right?
4 A I have no idea what it takes to be a
5 subadvisor, but I know there would be
6 requirements that I would have to fulfil.
7 Q And if you were a subadvisor, for
8 instance, you would have had to have your own
9 compliance program, correct?
10 A I suspect so, but I don't know anything
11 about being a subadvisor. So I can't answer that
12 with any certainty.
13 Q Well, you don't know anything about
14 being a subadvisor. I thought you just said that
15 you spoke to Mr. Szilagyi about the differences
16 between being hired as a subadvisor or as an
17 independent contractor, right?
18 A That's correct.
19 Q So you must know something about the
20 distinction?
21 A He suggested that there would be
22 regulatory requirements, but we didn't go into
23 detail in it.
24 Q And did you consult anyone besides Mr.
25 Szilagyi when you decided that you did not want

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1 to be engaged or your Harbor Financial did not
 2 want to be engaged as a subadvisor but instead
 3 you wanted to be retained on an independent
 4 contractor basis?
 5 A My wife.
 6 Q Is your wife an attorney?
 7 A No.
 8 Q Okay. Anyone besides your wife?
 9 A No.
 10 Q Okay. So you didn't contact any
 11 lawyers to say, hey, I'm thinking about
 12 converting my private fund to a '40 Act fund, got
 13 this decision to make. I can either go
 14 independent contractor. I could go subadvisor.
 15 Can you give me legal advice on this issue?
 16 A I did not.
 17 Q Okay. So you never consulted any
 18 lawyers?
 19 A That's correct.
 20 Q Okay. Did you have any attorneys
 21 review this portfolio manager agreement which has
 22 been marked as Exhibit 113?
 23 A No.
 24 Q Okay. Did you understand, by
 25 proceeding under an independent contractor

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1 arrangement as opposed to a subadvisor
 2 arrangement, you may be accepting the same
 3 regulatory risk as if you were proceeding under a
 4 subadvisory relationship?
 5 A I don't recall that being presented to
 6 me by Mr. Szilagyi, no.
 7 Q And I'm not asking you what Mr.
 8 Szilagyi told you or didn't tell you.
 9 I'm asking whether you ever thought,
 10 well, jeez, you know, a duck that quacks and
 11 looks -- walks like a duck, looks like a duck,
 12 quacks like a duck, it's still a duck regardless
 13 of whether you call it something else. Did that
 14 ever kind of go through your mind?
 15 A I don't generally think in those terms,
 16 no.
 17 MR. BENSON: Okay. I think that's all
 18 I have got on 113.
 19 BY MR. SCHMIDT:
 20 Q Okay. A couple follow-up points.
 21 I think at some point in your
 22 description you refer to yourself as a contract
 23 employee. Was that a -- did you misspeak? Did
 24 you intend to say independent contractor?
 25 A Again, I am not a Department of Labor

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1 guy so I won't quibble on words, but I am what I
 2 believe to be an independent contractor and not
 3 an employee, as I understand it.
 4 Q Okay. So if at some point in the last
 5 30 minutes, you said employee, you didn't mean
 6 to?
 7 A That's correct.
 8 Q Okay. When you were discussing with
 9 David your interaction with Mr. Szilagyi, you
 10 said that after he -- he, Mr. Szilagyi, had
 11 explained it to, you talked to your wife, you
 12 decided you didn't want to be a subadvisor?
 13 A Correct.
 14 Q Did Mr. Szilagyi leave that decision
 15 entirely up to you?
 16 A He did.
 17 Q Did he state his preference?
 18 A I don't recall if he did or not.
 19 Q As far as you knew, he just said
 20 whatever you want to do, we can do?
 21 A Correct.
 22 Q Okay. A couple times you have said
 23 that, when David had asked you about whether you
 24 told anybody at Catalyst about separately managed
 25 accounts, you had mentioned that you told Rob

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1 Glass. Do you remember that?
 2 A Well, I told Rob Glass for sure. I
 3 mean, I think he was aware of it. Jerry was the
 4 guy that I talked to. So I said, Jerry, I got
 5 these separately managed accounts. You tell me
 6 what I need to do to not have a conflict of
 7 interest or to demonstrate that there was nothing
 8 untoward going on.
 9 And I don't recall -- at some point Rob
 10 Glass got into the discussion, and I started
 11 interacting with him.
 12 More specifically, I remember those
 13 interactions to be my personal accounts and
 14 reporting to him, as I still do today, personal
 15 transactions.
 16 Q Okay. And thank you for that. I
 17 appreciate it.
 18 I'm just trying to get some dates on
 19 there.
 20 It sounds to me like your description
 21 is that your discussions with Mr. Szilagyi about,
 22 I'm managing these other accounts, I don't want
 23 any other conflict of interest problems, was
 24 preconversion to the futures fund?
 25 A Yes.

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1 Q In that process, right?
 2 A Yes. Yes.
 3 Q That's not something that you told him
 4 about after you're already managing the futures
 5 fund?
 6 A No.
 7 Q Okay. So if we take that mid-2013
 8 conversion point, when does your interaction with
 9 Mr. Glass start regarding accounts -- other
 10 accounts other than the futures fund account?
 11 A Probably at some point in the
 12 post-conversion -- pretty quick post-conversion.
 13 Q Okay. But you don't think he was part
 14 of those conversations you had with Mr. Szilagyi
 15 preconversion about avoiding conflicts of
 16 interest?
 17 A I don't recall that he was involved,
 18 no.
 19 Q Okay. All right. You mentioned that
 20 when the subject of trade allocation came up that
 21 there's a document that governs trade allocation
 22 between the separately managed accounts that you
 23 were managing.
 24 Did you say something like that?
 25 A I'm not sure of my exact words, but

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1 what I meant to say is that there are established
 2 procedures that offer different methods of
 3 allocating trades to ensure fairness when you're
 4 managing a collection of individual accounts.
 5 And so I -- I used an account
 6 allocation system that met those requirements.
 7 Q And can you tell me what these
 8 procedures are? Who established them? Are they
 9 called something?
 10 A Well, there are NFA-approved procedures
 11 for allocating trades. The simplest is across
 12 different levels -- you know, different levels of
 13 equity.
 14 So if you have a million dollars in
 15 your program and you have six accounts of varying
 16 assets in your account, they get allocated trades
 17 according to their specific trade level or
 18 proportionate share of the overall trade that you
 19 execute against this pool.
 20 Q And your understanding of using that
 21 kind of procedure is that the goal is to try to
 22 take out this sort of either implicit or explicit
 23 personal bias that somebody might have to favor
 24 one account over another?
 25 A Right. Exactly.

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1 Q Okay. And that was a procedure that
 2 you employed preconversion to the futures fund,
 3 right?
 4 A I didn't always trade the fund as a
 5 part of that program.
 6 Q No, no. I'm sorry. The separately
 7 managed accounts existed pre and post to the
 8 futures fund?
 9 A My -- my -- I misheard you when I
 10 said -- or misunderstood the futures fund. We
 11 established that definition early on.
 12 Q Yeah.
 13 A So ask the question again. Sorry.
 14 Q Certainly.
 15 Prior to conversion to the futures
 16 fund, right, you managed Harbor fund --
 17 A Yes.
 18 Q -- and the separately managed accounts?
 19 A Yes.
 20 Q And when you're managing these
 21 separately managed accounts, you employed this
 22 procedure to attempt to ward off any explicit or
 23 implicit bias in trade allocation?
 24 A Right.
 25 Q Okay. So you knew at that time that

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1 this potential issue existed, and you took steps
 2 to try to not fall into that bias in terms of who
 3 you allocate trades to?
 4 A Yes.
 5 Q Okay. So after the conversion to the
 6 futures fund, you still did that with respect to
 7 the separately managed accounts?
 8 A Yes.
 9 Q Okay. What did you do to try to
 10 eliminate any explicit or implicit bias between
 11 how you managed the separately managed accounts
 12 and how you managed the futures fund?
 13 A Well, on the occasion when there were
 14 the same trades done, which was not frequent, we
 15 would -- we would use an APPS system so that
 16 everyone got the same price, which is really -- I
 17 guess I'm -- that's really the point that -- the
 18 point of emphasis on managing a pool of accounts
 19 is to allocate appropriately and specifically not
 20 favor anyone in terms of an execution price.
 21 Q Okay. And did you have any discussions
 22 with Catalyst compliance department or compliance
 23 officer about how to do this?
 24 A I believe so, yes.
 25 Q Who?

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1 A I think it was Rob Glass.
 2 Q Okay. If you look at your portfolio
 3 manager agreement, which is Exhibit 113, if you
 4 go to Schedule B. I'm sorry. Paragraph 8 which
 5 references Schedule B.
 6 A Okay.
 7 Q It says, "The advisor will pay all
 8 expenses except as otherwise set forth in
 9 Schedule B," right? Essentially that's what this
 10 paragraph says?
 11 A Yes.
 12 Q Okay. So Catalyst pays all expenses
 13 unless it's on Schedule B, and then you, Ed
 14 Walczak, pays?
 15 A Yes.
 16 Q Okay. And then Schedule B includes
 17 basically everything associated with your
 18 Wisconsin office, right?
 19 You're going to pay the rent,
 20 computers? You buy the computers? You pay for
 21 utilities? Right? This is all the stuff that you
 22 pay out of Harbor Financial, L.L.C. account?
 23 A Correct.
 24 Q Okay. What about any extra staff in
 25 the Wisconsin office? Like, did you pay your

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1 interns?
 2 A Yes.
 3 Q Who pays those?
 4 A They were paid through Catalyst with
 5 the exception of one that I paid direct. He
 6 predated the relationship with Catalyst.
 7 MR. BENSON: Is that Augie?
 8 THE WITNESS: Yes.
 9 MR. BENSON: Ewald?
 10 THE WITNESS: Yes.
 11 MR. BENSON: E-w-a-l-d.
 12 (Reporter clarification.)
 13 BY MR. SCHMIDT:
 14 Q And the brokerage fees are split
 15 between you and Catalyst; is that correct?
 16 A Not brokerage fees. Sales commissions.
 17 MR. WASSERMAN: You mean advisory fees?
 18 THE WITNESS: Well, that's not expense.
 19 Yeah. Advisory fees are split, but the expense
 20 that's split is --
 21 MR. WASSERMAN: I'm sorry. I may have
 22 misunderstood the question.
 23 THE WITNESS: Brokerage fees are
 24 transaction costs paid out of the fund.
 25 MR. ZILIAK: I'm sorry. I believe

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1 we're confused. Could we repeat the question
 2 please?
 3 BY MR. SCHMIDT:
 4 Q You know what, I mean, I'll just
 5 withdraw the question. I'll figure it out, and
 6 I'll ask it later if I need to.
 7 Who paid Kim Rios?
 8 A Catalyst pays her netted against my
 9 compensation. So I pay her through Catalyst.
 10 BY MR. BENSON:
 11 Q Let's actually start with how you're
 12 paid.
 13 Looking at Exhibit 113, Paragraph 9, it
 14 says, "Compensation of the portfolio manager."
 15 That's you, right?
 16 A Correct.
 17 Q Okay. It says, "For the service
 18 provided pursuant to this agreement, the
 19 advisor" -- that's Catalyst -- pays to the
 20 portfolio manager" -- that's you -- "as full
 21 compensation, therefore, the compensation set
 22 forth on Schedule B." Okay?
 23 And if we go to Schedule B which is
 24 Page 13 of Exhibit 113, it says that -- under
 25 "Portfolio manager fees," there's two paragraphs.

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1 The first says, "The portfolio manager will
 2 receive 100 percent of the net advisory fees paid
 3 to the advisor with respect to the assets
 4 transferred from Harbor Assets, L.L.C., at
 5 commodity pool," right?
 6 A Right.
 7 Q So the investors that you had before
 8 conversion, you get a hundred percent of the fees
 9 related to those individuals, right?
 10 A Correct.
 11 Q Okay. And then it says, The portfolio
 12 manager will receive 60 percent of the net
 13 advisory fees paid to the advisor with respect to
 14 all assets in the fund except for the assets
 15 transferred from Harbor Assets, L.L.C., as set
 16 forth above until the fund's net assets reach \$20
 17 million. The portfolio manager will receive 50
 18 percent -- 50 percent of the net advisory fees
 19 paid to the advisor with respect to all assets in
 20 the fund except for the assets transferred from
 21 Harbor Assets, L.L.C., as set forth above after
 22 the fund reaches 20 million in net assets, right?
 23 So, essentially, big picture, once the
 24 fund -- the futures fund hit 20 million in AMU --
 25 AUM --

<p style="text-align: right;">Page 285</p> <p>1 A Um-hum.</p> <p>2 Q -- you were going to split fees with</p> <p>3 Catalyst, right?</p> <p>4 A That's correct.</p> <p>5 Q Okay. And how did you agree to that</p> <p>6 percentage split?</p> <p>7 A I think that was what Catalyst</p> <p>8 proposed, to the best I can remember.</p> <p>9 Q Is that standard in your experience,</p> <p>10 for a portfolio manager to get a 50 percent split</p> <p>11 with the advisor on net advisory fees?</p> <p>12 A I have no experience with what</p> <p>13 portfolio managers make.</p> <p>14 Q So before you entered into this</p> <p>15 agreement, you didn't do any market research to</p> <p>16 figure out, like, where should I be?</p> <p>17 A Yes.</p> <p>18 Q Have you ever bought a house?</p> <p>19 A Yes.</p> <p>20 Q Okay. So when you buy a house, are you</p> <p>21 like, that's a great house; I'm going to pay \$10</p> <p>22 million for it, or are you, like, it's a nice</p> <p>23 house; I'm going to find out what the market is</p> <p>24 before I put in my bid?</p> <p>25 A The latter. I'll investigate the</p>	<p style="text-align: right;">Page 287</p> <p>1 existed pre Ms. Rios, correct, that we just went</p> <p>2 over?</p> <p>3 A It still exists.</p> <p>4 Q Okay. So -- and at this point, we are</p> <p>5 way past \$20 million; is that fair to say?</p> <p>6 A At which point?</p> <p>7 Q Today.</p> <p>8 A Yes.</p> <p>9 Q Or actually when Ms. Rios joined.</p> <p>10 A Let's see. Yes. Yes.</p> <p>11 Q Just -- just to give you a reference,</p> <p>12 in May of 2013, I think you're at \$16 million.</p> <p>13 So you had \$4 million to go at that point?</p> <p>14 A That \$16 million didn't come over to</p> <p>15 the fund. Roughly 7 million did.</p> <p>16 Q Okay.</p> <p>17 MR. WASSERMAN: But it's fair to infer</p> <p>18 from this document that as of August 27th, 2013,</p> <p>19 that AUM was less than \$20 million?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. SCHMIDT:</p> <p>22 Q Okay. So before Ms. Rios joins, as</p> <p>23 long as the assets under management are above \$20</p> <p>24 million, it's a 50/50 split between you and</p> <p>25 Catalyst, correct?</p>
<p style="text-align: right;">Page 286</p> <p>1 market before I --</p> <p>2 Q That's usually what people do. But</p> <p>3 with regard to entering into your employment</p> <p>4 agreement, you didn't do any market analysis to</p> <p>5 figure out what the typical split would be</p> <p>6 between an advisor and a portfolio manager?</p> <p>7 A No.</p> <p>8 Q Okay.</p> <p>9 25</p> <p>10 BY MR. WASSERMAN:</p> <p>11 Q Was there a negotiation over that 50</p> <p>12 percent number?</p> <p>13 A No.</p> <p>14 Q Who proposed it?</p> <p>15 A Mr. Szilagyi.</p> <p>16 Q So out of the gate, he offered you 50</p> <p>17 percent of the advisory fees?</p> <p>18 A Correct.</p> <p>19 MR. BENSON: You didn't go for 52</p> <p>20 percent?</p> <p>21 THE WITNESS: No.</p> <p>22 MR. BENSON: Okay.</p> <p>23 MR. WASSERMAN: You're a modest man.</p> <p>24 BY MR. SCHMIDT:</p> <p>25 Q So that is the fee structure that</p>	<p style="text-align: right;">Page 288</p> <p>1 A Yes.</p> <p>2 Q Okay. So do you remember how much Ms.</p> <p>3 Rios was paid initially?</p> <p>4 A I will give you my best recollection,</p> <p>5 recognizing that it may be off. But my best</p> <p>6 recollection was a \$100,000 per --</p> <p>7 MR. ZILIAK: Salary?</p> <p>8 THE WITNESS: Per annum with a bonus</p> <p>9 potential.</p> <p>10 BY MR. SCHMIDT:</p> <p>11 Q Okay. Let's assume just for purposes</p> <p>12 of this analysis, it's a \$100,000 even, no bonus.</p> <p>13 Okay?</p> <p>14 A (Nodding head.)</p> <p>15 Q So -- and the split of advisory fees in</p> <p>16 the first year that Ms. Rios is there is \$5</p> <p>17 million a piece. Okay? Just for purposes of A</p> <p>18 hypothetical.</p> <p>19 A Okay.</p> <p>20 Q All right.</p> <p>21 Does Ms. Rios's \$100,000 come out of</p> <p>22 your 5 million or Catalyst's 5 million, or is it</p> <p>23 split evenly between them?</p> <p>24 A It comes out of my 5 million.</p> <p>25 Q Okay. So other than the routing of</p>

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1 money, is there anything different with that
 2 situation and you paying Ms. Rios directly?
 3 A No.
 4 Q Okay. It's just instead of the money
 5 going from Catalyst to you and then to Ms. Rios,
 6 it goes from Catalyst, a little bit to Ms. Rios,
 7 the rest to you?
 8 A Yes.
 9 Q But it's out of your chunk?
 10 A Yes.
 11 Q Okay. And did that continue or has
 12 that continued to the present?
 13 A Her --
 14 Q Whatever she is due comes out of your
 15 portion?
 16 A Yes. Yes. That arrangement continues,
 17 yes.
 18 Q Okay.
 19 BY MR. BENSON:
 20 Q So by altering Ms. Rios's
 21 responsibilities with regard to the futures fund
 22 yesterday, you've essentially given yourself a
 23 bonus?
 24 A I've given her a pay cut.
 25 Q Well, who -- where does -- where does

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1 the amount that she was due -- I mean, someone
 2 has -- someone gets it now. So who gets it?
 3 A I get it.
 4 Q Yeah.
 5 BY MR. WASSERMAN:
 6 Q Can you explain why she got a pay cut?
 7 A Because she's no longer --
 8 Q I'm sorry. Let me rephrase the
 9 question.
 10 Can you explain what changed in the
 11 compensation structure that caused her to get a
 12 pay cut?
 13 A Sure. She -- up until essentially
 14 yesterday, she was receiving a percentage of
 15 assets of the hedged futures fund.
 16 Q What percentage was that?
 17 A I want to say it's -- let me make
 18 sure --
 19 Q Was it a percentage of the advisory fee
 20 or the percentage of the AUM?
 21 A It was a percentage of AUM purely for
 22 computational ease. And I want to -- let me see
 23 if this is right.
 24 She would -- she would stand to make
 25 somewhere over -- a little over a hundred dollars

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1 on the hedged futures fund at its current size.
 2 So whatever that comes out to be -- you know,
 3 whatever 100,000 of a billion is. So it's one
 4 something, whether that one bip, ten bips. I
 5 don't want to do the math in my head.
 6 Q When did she start getting that
 7 percentage of the AUM of the futures fund?
 8 A My best recollection is that, after her
 9 first year as a salary-plus-bonus person -- let's
 10 see. Right. That was also very -- so her -- I
 11 think December 1st is her hire date. So that was
 12 very close to the launch of the hedged commodity
 13 fund.
 14 So when we sat down to do her
 15 performance review and talk about compensation
 16 and her annual anniversary, that's when we agreed
 17 on a new compensation structure that paid her on
 18 a variable basis for her work on hedged
 19 commodities and also on a variable basis for
 20 hedged futures.
 21 Q And did the percentage change over time
 22 with respect to the percentage of AUM that she
 23 got of the futures fund?
 24 A No.
 25 MR. ZILIAK: Sorry. If I may, we have

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1 been going for about 90 minutes now. I believe
 2 you have an hour to go.
 3 Could we perhaps have a break pretty
 4 soon and then do one final stint, or what is
 5 you -- what are you envisioning?
 6 MR. SCHMIDT: Yeah. We can take a
 7 break now. We are off the record at 4:14 p.m.
 8 (A brief recess was taken.)
 9 BY MR. SCHMIDT:
 10 Q Back on the record at 4:29 p.m.
 11 Mr. Walczak, during the break, we did
 12 not have any substantive discussions -- either
 13 the staff of the SEC or CFTC with you; is that
 14 correct?
 15 A That's correct.
 16 BY MR. BENSON:
 17 Q Okay. Mr. Walczak, I'm going to ask
 18 you a few questions.
 19 So we looked at the portfolio manager
 20 agreement that you entered into with Catalyst
 21 Capital Advisors earlier today, right?
 22 A Yes.
 23 Q Okay. Are you aware of a portfolio
 24 manager management agreement that you entered
 25 into with Ms. Rios?

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1 A We don't have a formal agreement. We
 2 have -- we have some documents regarding her
 3 compensation and her goals and objectives.
 4 Q Okay. So I'll hand you Exhibit 124.
 5 (SEC Exhibit No. 124 was
 6 marked for identification.)
 7 BY MR. BENSON:
 8 Q If you could tell me what Exhibit 124
 9 is.
 10 A This was -- I've attempted
 11 unsuccessfully -- I shouldn't say
 12 unsuccessfully -- by my own failure to push
 13 through a couple points to try to put an
 14 agreement in place with Ms. Rios.
 15 This was an effort on my part to modify
 16 my agreement with Catalyst to make it relevant
 17 and have an agreement with her.
 18 Q Okay.
 19 A Never executed.
 20 Q A lot to unpack there.
 21 That was my first question. Is there
 22 an executed version of Exhibit 124?
 23 A No.
 24 Q No? Okay.
 25 So why did you want to modify your

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1 agreement with Catalyst?
 2 A You mean relative to Ms. Rios?
 3 Q Let's start with Exhibit 124. What --
 4 what -- so you just gave me, if I heard you
 5 correctly, two purposes of Exhibit 124.
 6 Number one was to push through an
 7 agreement with Ms. Rios; is that what you said?
 8 A Yes.
 9 Q Okay. And then number two was to
 10 modify your agreement with Catalyst.
 11 Did I get that correctly? Perhaps I
 12 didn't.
 13 A No. No. What I said was I took my
 14 agreement with Catalyst and modified it to
 15 reflect my relationship with Ms. Rios.
 16 So I used my agreement, as a template
 17 with significant modifications, to craft an
 18 agreement between Ms. Rios and myself.
 19 Q Okay. You're not a lawyer, right?
 20 A That's correct.
 21 Q Okay. So an attorney did not draft
 22 Exhibit 124?
 23 A Correct.
 24 Q Did you have any attorneys involved in
 25 the drafting or review of Exhibit 124?

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1 A No.
 2 Q Okay. All right. So why did you want
 3 to enter into a portfolio manager management
 4 agreement with Ms. Rios?
 5 A I felt it was good practice to clarify
 6 her relationship to me.
 7 Q Okay. And -- and what was the -- what
 8 was the benefit to you to clarify that business
 9 relationship with Ms. Rios?
 10 A It's been my experience that that --
 11 it's best to have things like this documented and
 12 clarified so there is less chance for
 13 disagreement later.
 14 Q Okay. And was there an event that
 15 caused you to feel as of January 1st, 2017, that
 16 it was important to document that relationship?
 17 A No. Let me think. January. It was --
 18 if anything, it was subsequent to her -- it was
 19 about this time when we were doing an annual with
 20 her because her anniversary is December 1st.
 21 Q Okay. And why did -- why did Ms.
 22 Rios -- do you know -- did Ms. Rios tell you why
 23 she refused -- why she would not sign Exhibit
 24 124?
 25 A She had some disagreements with parts

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1 of it.
 2 I don't even remember which parts, but
 3 she did have some dis- -- some things she was
 4 reluctant to have included in the agreement.
 5 Q And why didn't you agree to compromise
 6 with her?
 7 A I did, and then I just let it go.
 8 Q Okay. Do you know when the class
 9 action lawsuit was filed against Catalyst and
 10 yourself?
 11 A No, I don't.
 12 Q Okay. Okay. And you also wanted to
 13 modify your agreement with Catalyst with respect
 14 to Ms. Rios, I'm assuming; is that right?
 15 A No. I -- the agreement --
 16 Q I'm sorry. I'm sorry. I'm sorry. You
 17 used -- you used the agreement with Catalyst --
 18 A Right.
 19 Q I gotcha.
 20 Okay. So -- so this document was never
 21 signed?
 22 A Correct.
 23 Q Okay. So do you have any -- is there
 24 any contract in place between you and Ms. Rios
 25 regarding her employment relationship with you

<p style="text-align: right;">Page 297</p> <p>1 and/or Catalyst?</p> <p>2 A There is no contract, no.</p> <p>3 Q Okay. So last week -- it sounds like</p> <p>4 maybe even yesterday she -- Ms. Rios was relieved</p> <p>5 of responsibilities with regard to the hedged</p> <p>6 futures strategy fund, right?</p> <p>7 A That was done at her request after</p> <p>8 several weeks, perhaps months, of discussion</p> <p>9 between the two of us.</p> <p>10 Q Okay. So you had lengthy discussions</p> <p>11 about this decision?</p> <p>12 A Yes.</p> <p>13 Q Okay. Why did she want to be relieved</p> <p>14 of responsibilities with regard to the hedged</p> <p>15 futures strategy fund?</p> <p>16 A Two reasons. The -- this</p> <p>17 investigation, for example, has caused her a lot</p> <p>18 of stress, and she relates that to hedged</p> <p>19 futures.</p> <p>20 The second reason is that she's</p> <p>21 excited, passionate about the commodity fund that</p> <p>22 she takes a lead role in and is anxious to devote</p> <p>23 more of her time to that vehicle.</p> <p>24 Q Did Ms. Rios ever express to you that</p> <p>25 by removing herself from the hedged futures</p>	<p style="text-align: right;">Page 299</p> <p>1 And, again, there's also the issue of</p> <p>2 her being able to devote more time and -- and not</p> <p>3 perform some of the operational tasks associated</p> <p>4 with hedged futures.</p> <p>5 Q Okay. So do you recall when Ms. Rios</p> <p>6 joined or started working with you as an</p> <p>7 independent contractor on the hedged futures</p> <p>8 strategy fund?</p> <p>9 A Again, I'm pretty sure it was December</p> <p>10 1st of 2014.</p> <p>11 Q Okay. So between -- let's call it</p> <p>12 August 2013 and November 2014, you are the sole</p> <p>13 portfolio manager of the hedged futures strategy</p> <p>14 fund, correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. So what happens if Ed Walczak</p> <p>17 gets hit by a bus and dies during that period?</p> <p>18 Obviously, it didn't happen. Thank</p> <p>19 God. But what would have happened?</p> <p>20 A My wife would have collected</p> <p>21 significant life insurance --</p> <p>22 Q Okay.</p> <p>23 A -- been grief stricken, and then</p> <p>24 Catalyst would have had to find a different</p> <p>25 portfolio manager.</p>
<p style="text-align: right;">Page 298</p> <p>1 strategy fund in 2018 that would somehow impact</p> <p>2 her potential liability for conduct back in 2016,</p> <p>3 2017, and -- and earlier?</p> <p>4 A She did not.</p> <p>5 It was my comment to her that -- that</p> <p>6 exact point, that what's done is done; the past</p> <p>7 is past; leaving hedged futures now doesn't</p> <p>8 impact what's happened in the past.</p> <p>9 However, she was -- she was under a</p> <p>10 significant amount of stress and felt like this</p> <p>11 would be something she wanted to do.</p> <p>12 Q Okay. So you did talk about, you know,</p> <p>13 her decision and how it may or may not impact</p> <p>14 historical conduct with regard to the hedged</p> <p>15 futures strategy?</p> <p>16 A I gave -- as -- as her supervisor, I</p> <p>17 gave her my best opinion on that. In fact, I</p> <p>18 cautioned her to -- to David's point earlier,</p> <p>19 about potential decrease. David. I'm sorry.</p> <p>20 Maybe it wasn't even Sam who said the question</p> <p>21 about "Who gets her compensation?"</p> <p>22 I told her that, you know, that would</p> <p>23 mean a decrease in compensation, and she said it</p> <p>24 would be more than worth it to relieve herself</p> <p>25 from the stress of the hedged futures situation.</p>	<p style="text-align: right;">Page 300</p> <p>1 Q Okay. And what steps, if any, did you</p> <p>2 take to ensure that Catalyst would be able to</p> <p>3 find a replacement for you without disrupting the</p> <p>4 management of the hedged future -- the hedged</p> <p>5 futures strategy fund?</p> <p>6 A Well, the first was, as the fund grew,</p> <p>7 is I had discussions with Mr. Szilagyi who</p> <p>8 encouraged me to go find a person like Ms. Rios.</p> <p>9 And so that -- that search process probably took</p> <p>10 about six months or so. So we were down that</p> <p>11 path.</p> <p>12 At the same time I had put in place</p> <p>13 kind of failsafe procedures, so to speak, so that</p> <p>14 if something happened to me that the shareholders</p> <p>15 would not be immediately harmed, even though we</p> <p>16 would -- it's likely that Catalyst would have --</p> <p>17 well, again, I don't know what they would have</p> <p>18 done. I don't want to speculate, but we had</p> <p>19 discussions about whether they might have someone</p> <p>20 in-house who could take over the fund, whether we</p> <p>21 would wind it down to cash. We discussed several</p> <p>22 different options, ultimately, saying, look, we</p> <p>23 don't want this to happen. Let's get someone</p> <p>24 else on board.</p> <p>25 Q Okay. A lot to unpack there.</p>

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1 So you started off the discussion as
 2 the fund grew, we started a search process to
 3 find someone, right?
 4 A Sure.
 5 Q So let's focus on a very discrete
 6 period of time, May 2013 through September 2013.
 7 A Okay.
 8 Q Okay? So this is really in its infancy
 9 as it's starting to convert or it's just
 10 converted, right?
 11 A Well, it converted on September 13, and
 12 in May it was -- it was pretty much a switch.
 13 Q But not really, right, because we
 14 looked at Exhibit 111, right?
 15 And 111 is the minutes of the board of
 16 trustees meeting, right?
 17 And the board of trustees -- and boards
 18 of trustees play a very significant -- I can't
 19 underestimate how significantly a board of
 20 trustees -- their role is with regard to mutual
 21 funds in the context of the Investment Company
 22 Act of 1940.
 23 (Reporter clarification.)
 24 BY MR. BENSON:
 25 Q They had to review and approve that

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1 process of converting from a private fund to a
 2 publicly traded fund, right?
 3 A Sure.
 4 Q Okay. And that's in May. So I'm
 5 asking, during that period May 2013 through
 6 September 2013, what steps did you take to ensure
 7 that the fund could continue to handle
 8 third-party assets in the event that you passed
 9 away?
 10 A None.
 11 Q None. Okay.
 12 Just to make sure we are kind of
 13 understanding that, so you did not establish any
 14 policies and procedures that would wind the
 15 positions down to cash in the event you passed
 16 away?
 17 A None more than were in place for the
 18 Harbor fund.
 19 Q And what was in place with the Harbor
 20 fund?
 21 A I had key partners in the fund who --
 22 you know, relatives and responsible people who
 23 would be aware of something happening, and our
 24 long-time execution team on the floor was
 25 instructed that, in the event one of these

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1 individuals contacted them with liquidation
 2 instructions, then that's what they were to do.
 3 Q And were those liquidation instructions
 4 reduced to writing?
 5 A No.
 6 Q Okay. Who was made aware of who the
 7 key partners in the Harbor Financial fund were?
 8 A The Harbor fund. Really it was Harbor
 9 Assets, but --
 10 Q I'm sorry. Harbor Assets.
 11 A I don't know that I had that -- that I
 12 made Catalyst aware. In fact, I don't think I
 13 did.
 14 Q Okay. So Catalyst wasn't aware of this
 15 list of kind of -- we'll call it key decision
 16 makers in the case of Ed Walczak's early passing?
 17 A No, only because, once the fund was
 18 converted, those individuals no longer had a
 19 role.
 20 Q Okay. So you terminated whatever
 21 agreement you had with those individuals at the
 22 time that it was converted?
 23 A I had no formal agreement with them.
 24 Q Okay. So that was just an
 25 understanding. There was nothing in writing?

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1 A That's correct.
 2 Q Okay. Good thing you didn't pass away.
 3 I don't know how that would have all worked.
 4 Okay. So you didn't take any -- any
 5 steps in terms of liquidation instructions.
 6 Did you have anyone at Catalyst who
 7 would, you know, be authorized to come in and
 8 manage the fund at least until -- you know, at
 9 all? Did you train anyone about how frequently
 10 the fund traded?
 11 A No. I introduced Jerry to our
 12 execution team on the floor.
 13 Q Okay.
 14 A So that he would -- the two of them
 15 would have the familiarity for him to essentially
 16 step into the shoes of the partners from the
 17 Harbor fund and direct the liquidation.
 18 Q So you did contemplate liquidation with
 19 Jerry?
 20 A Yes, if something happened to me,
 21 correct.
 22 Q And when was that?
 23 A It was -- it was around the time of the
 24 conversion when we had discussions like this.
 25 Q Okay. So you talked to Jerry. If I

<p style="text-align: right;">Page 305</p> <p>1 pass away, you're going to reach out to someone?</p> <p>2 A J.J. O'Keefe.</p> <p>3 Q J.J. O'Keefe?</p> <p>4 A Jeremy O'Keefe.</p> <p>5 Q You're going to reach out to J.J. O'Keefe, and he knows how to liquidate the fund?</p> <p>6 A Yes.</p> <p>7 Q Okay. And when did that conversation</p> <p>8 take place?</p> <p>9 A Again, I don't know exactly, but it was</p> <p>10 around the conversion of the fund.</p> <p>11 Q Okay. And J.J. is not an employee or</p> <p>12 an independent contractor of Catalyst, right?</p> <p>13 A That's correct.</p> <p>14 Q And he's not -- he's not associated as</p> <p>15 an employee or an independent contractor of</p> <p>16 Harbor Financial, right?</p> <p>17 A Right. He's not.</p> <p>18 Q Okay. Did you have any agreements or</p> <p>19 documents in place with J.J. that set forth the</p> <p>20 parameters of the liquidation that you had</p> <p>21 discussed with Mr. Szilagyi?</p> <p>22 A No.</p> <p>23 Q Okay. When you told Mr. Szilagyi about</p> <p>24 this liquidation plan, did he ask for it to be</p> <p>25</p>	<p style="text-align: right;">Page 307</p> <p>1 again, we are focusing on May 2013 through</p> <p>2 September 2013, did you train or discuss with any</p> <p>3 Catalyst investment personnel the trading</p> <p>4 strategy or the frequency of trading of the</p> <p>5 futures fund?</p> <p>6 A I don't really recall specific</p> <p>7 conversations, but certainly as -- as the funds</p> <p>8 converted and as I gained experience in working</p> <p>9 with Catalyst, certainly there were conversations</p> <p>10 about -- to get various people at Catalyst more</p> <p>11 up to speed on exactly how the fund operated and</p> <p>12 what it did.</p> <p>13 Q But, again, let's focus -- narrow the</p> <p>14 time period to, say, the month of May 2013. Did</p> <p>15 you have anyone come in from New York to -- to</p> <p>16 Madison, sit down with him, walk through the</p> <p>17 strategy, walk through how you actually execute</p> <p>18 the strategy?</p> <p>19 A Jerry came out initially, but I think</p> <p>20 that may have been post-conversion.</p> <p>21 24</p> <p>22 1 BY MR. WASSERMAN:</p> <p>23 Q Just a quick question about the</p> <p>24 liquidation plan that you kept referring to.</p> <p>25 What were the specifics of the</p>
<p style="text-align: right;">Page 306</p> <p>1 reduced to writing?</p> <p>2 A I don't recall that he did.</p> <p>3 Q Okay. What was Mr. Szilagyi's reaction</p> <p>4 when you talked to him about this potential</p> <p>5 liquidation in the event of your untimely</p> <p>6 passing?</p> <p>7 A I don't really recall the details of it</p> <p>8 other than we discussed it.</p> <p>9 Q Okay. But someone -- was it you or was</p> <p>10 it Jerry who brought up the idea of your early</p> <p>11 passing?</p> <p>12 A I don't -- I don't recall. It -- it --</p> <p>13 it was raised from time to time, especially early</p> <p>14 in -- in the fund's life. So I don't remember</p> <p>15 exactly who raised the issue.</p> <p>16 Q Okay. But you are -- you are sure that</p> <p>17 it was -- the game plan was liquidation through</p> <p>18 Jerry and J.J., correct?</p> <p>19 A Well, that -- that was the -- you know,</p> <p>20 that's subject to Jerry's discretion. That was</p> <p>21 his -- you know, I wanted him to have the ability</p> <p>22 to do that. If he felt as though he had another</p> <p>23 alternative with an existing portfolio manager,</p> <p>24 then that's up to him.</p> <p>25 Q Okay. And during this time period,</p>	<p style="text-align: right;">Page 308</p> <p>1 liquidation thing?</p> <p>2 A The liquidation plan was not a detailed</p> <p>3 plan other than to ensure that we had a</p> <p>4 knowledgeable person who could, without harm to</p> <p>5 the portfolio value, in an orderly fashion</p> <p>6 liquidate the fund upon the instruction of</p> <p>7 Catalyst.</p> <p>8 Q All right. So I think you confirmed</p> <p>9 that J.J. would be the one to do this, right?</p> <p>10 A Yes.</p> <p>11 Q What conversations did you have with</p> <p>12 him about how to do it?</p> <p>13 A I don't recall specifics other than to</p> <p>14 say to him, you know, Catalyst -- in other words,</p> <p>15 he's executing orders for me on the Harbor fund</p> <p>16 for a long time.</p> <p>17 Q Uh-hum.</p> <p>18 A So now, by the way, J.J., it's Catalyst</p> <p>19 running the show now. I want to introduce you to</p> <p>20 Mr. Szilagyi. If at some point I'm incapacitated</p> <p>21 or in any event, because he, as the advisor, has</p> <p>22 the ability to do that, you can take instructions</p> <p>23 from Mr. Szilagyi, and those instructions may</p> <p>24 involve an orderly liquidation of the fund.</p> <p>25 Q Was there any discussion about how</p>

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1 exactly that orderly liquidation would proceed?

2 A No.

3 Q Any discussion about whether -- whether
4 everything should be liquidated in a day versus a
5 month?

6 A No. That would be -- I expected that
7 would be a judgment call between Catalyst and Mr.
8 O'Keefe.

9 BY MR. BENSON:

10 Q And how were the separately managed
11 accounts to be managed in the event of your
12 incapacity or untimely passing?

13 A We had introducing brokers who served
14 as the intermediary between me and the clients.
15 So my expectation was that each of those
16 introducing brokers had the capacity to perform a
17 liquidation or -- liquidation of positions or
18 whatever their clients instructed them to do.

19 Q And did you confirm that they had power
20 of authority -- power of attorney?

21 A No.

22 Q Okay. Okay. Have you ever heard of
23 something called key man risk?

24 A Yes.

25 Q What is key man risk?

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1 A Well, I have heard of key man
2 insurance. Let me put it that way.

3 Q Okay. What's key man insurance?

4 A So I believe it's when a business takes
5 out an insurance policy on a key individual in
6 their organization to compensate them for -- for
7 all sorts of consequences of his untimely death
8 or, in some cases, even disability, but mostly
9 death, I guess.

10 Q Okay. Do you know whether Harbor
11 Financial or Catalyst took out a key man
12 insurance policy on you?

13 A Jerry and I discussed it at some point,
14 and I don't recall exactly when, but, again,
15 relatively early in the fund's life.

16 Q Okay. And what was the ultimate
17 conclusion?

18 A The conclusion was that Jerry was going
19 to investigate taking out a policy, and my
20 recollection is I didn't hear back from him on
21 the subject. It wasn't -- it wasn't something I
22 pursued.

23 Q Okay. But he didn't laugh it off and
24 say, Ed, you're crazy; we don't need to get key
25 man insurance. He said oh, I'll look into it?

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1 A No, no. He proposed it to me.

2 Q Oh, he proposed it to you?

3 A And I said I have no objection.

4 Q Interesting. Okay.

5 So is it fair to say that, at least

6 from your perspective of things, Jerry understood
7 that you were extremely important to the success
8 or failure of the hedged futures strategy fund?

9 A Yes.

10 Q Okay. Remember early today -- I keep
11 coming back to this document. I'm sorry. Exhibit
12 133, which is the prospectus from August 29th,
13 2013.

14 I think -- I'm not -- I think you've
15 answered this question, but do you know whether
16 Jerry had any involvement reviewing or approving
17 Exhibit 133?

18 A I don't.

19 Q Okay. Does it surprise you -- and you
20 can look for yourself. I'll make the
21 representation. There's no disclosure of key man
22 risk in this document. Does that surprise you?

23 A Again, I have -- I have no experience
24 with these types of documents. I don't have any
25 basis to be surprised or not surprised at what's

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1 included or not.

2 Q Okay. Okay. And then remember we
3 talked about the -- the May 13th, 2013, board
4 meeting where you and Mr. Amhrein presented the
5 hedged futures strategy fund to the board of
6 trustees for approval?

7 A Yes.

8 Q Okay. Do you remember when one of the
9 trustees asked a question about what would happen
10 to the fund in the event that you were
11 unavailable?

12 A I don't recall really any specifics
13 about that meeting.

14 Q Okay. So you don't remember that
15 question coming up?

16 A No.

17 Q And you don't remember Mr. Szilagyi
18 answering it?

19 A No. Again, I just don't recall the
20 details of the conversation.

21 Q And you don't remember answering it
22 because you don't remember the question?

23 A No.

24 Q All right.

25 BY MR. SCHMIDT:

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1 Q Ms. Rios, before a couple days ago --
 2 right? So she's still portfolio manager of the
 3 futures fund, and she's still being paid based on
 4 whatever the percentage is, correct?
 5 A Right.
 6 Q Is she -- is her compensation also
 7 based on any calculation of assets under
 8 management or anything to do with the commodity
 9 fund?
 10 A Yes.
 11 Q Okay. And did her pay under that
 12 calculation for the commodity fund continue
 13 through this recent change?
 14 A Yes.
 15 Q Was it revised at all?
 16 A No.
 17 Q Okay. So before the change, she got
 18 paid A and B; and after the change, it was just
 19 B, for example?
 20 A Yes.
 21 Q Okay.
 22 MR. WASSERMAN: And it was your
 23 testimony that A was approximately \$100,000 this
 24 year?
 25 THE WITNESS: Well, it's -- at the

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1 current fund level, that's what it would be
 2 approximately. So as I said, it's -- it's ten
 3 bips or one bip or whatever that number.
 4 MR. WASSERMAN: And she walked away
 5 from a hundred grand?
 6 THE WITNESS: Yes.
 7 BY MR. SCHMIDT:
 8 Q Wait. I'm sorry. I guess I
 9 misunderstood.
 10 I thought it was a \$100,000 at one
 11 billion.
 12 A Yes.
 13 Q So it would be more like \$400,000
 14 today, right, or \$350,000?
 15 A The reverse.
 16 Q Oh.
 17 A We are one billion today.
 18 MR. WASSERMAN: The fund is no longer
 19 at four billion, correct?
 20 BY MR. SCHMIDT:
 21 Q Okay. I'm sorry. So when it was four
 22 billion, it was \$400,000?
 23 A Yes.
 24 Q Okay. So it tracked basically 100,000
 25 every billion throughout the life of it?

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1 A Yes. Yes.
 2 Q Okay. Do you remember what the
 3 commodity fund was?
 4 A Well, the commodity fund, her -- her
 5 compensation in the commodity fund is 50 percent
 6 of my compensation on the commodity fund, meaning
 7 25 percent of advisory fees, the same conditions
 8 minus sales commissions, et cetera.
 9 BY MR. WASSERMAN:
 10 Q How big is the commodity fund now?
 11 A I think it's about 90 million now.
 12 It's -- it's gone back and forth between 90 and
 13 \$110 million over the last year.
 14 Q Okay. So she makes -- so the total
 15 advisory fees on that fund are 1 and
 16 three-quarter percent; is that right?
 17 A Yes.
 18 Q And she makes about a quarter of that?
 19 A Yes.
 20 Q So that's -- that's, what, like 35 --
 21 like .35 to .40 percent?
 22 A It's -- at 100 million, it would be
 23 \$375,000. No. That's wrong. 400 and -- don't
 24 do math in public. 435 or something like that,
 25 440.

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1 Q So she walked away from 20 percent of
 2 her salary?
 3 A Yes.
 4 Q Any speculation as to -- other than
 5 what you've already testified to today as to why
 6 she did that?
 7 A No. She was very -- all -- I have to
 8 emphasize she's very upset and emotional about
 9 aspects of the process that we are involved in
 10 today.
 11 Q Is --
 12 MR. BENSON: Anything other than the
 13 investigative process that she's expressed to you
 14 as being challenging or frustrating to her such
 15 as --
 16 BY MR. WASSERMAN:
 17 Q What do you recall of -- of -- of
 18 your -- of her statements to you regarding why
 19 she walked away from a quarter of her salary?
 20 A Well, I -- I -- she came to me and said
 21 that she would like to remove herself -- resign
 22 from hedged futures, and I asked her why.
 23 And she said that she -- as I've
 24 testified, she said that the investigative
 25 process was very stressful to her and, in

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1 general, the -- the environment around hedged
2 futures with -- with that process and performance
3 issues over the last year has -- you know, it was
4 worth it to her to give up that compensation to
5 remove herself.

6 Q What did you think that she meant by
7 performance issues over the last year?

8 A Well, 2017 -- the reason we are in the
9 room is we had a large drawdown and an overall
10 very poor year, which caused a lot of inquiries
11 from sales force and advisors, some of which fell
12 across her desk, so to speak. So this put her
13 under a lot of strain.

14 BY MR. SCHMIDT:

15 Q Did she ever voice displeasure as to
16 the decisions that were made during the time
17 period of December 2016 through February 2017?

18 A I don't recall specifically other than,
19 you know, those were difficult times for everyone
20 involved. So there was some disagreements around
21 course of action.

22 Kimberly was involved in many of those
23 discussions and was frustrated as much as anybody
24 else about the situation.

25 Q Okay. I appreciate that. I don't know

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1 if that's exactly what I'm asking, though.

2 I'm not asking if she expressed
3 frustration or dissatisfaction at the time.

4 I'm talking about you said there were
5 discussions -- I think you said several months of
6 discussions or many discussions leading up to the
7 decision that happened yesterday. Okay?

8 A Well, the decision happened a month
9 ago. Effective yesterday. Yes.

10 Q Okay. But there were discussions
11 leading up to that point?

12 A Sure.

13 Q So I am not talking about did you guys
14 have a disagreement in December or January or
15 February of 2017.

16 I am asking about, in those discussions
17 where she says, you know, this thing is a huge
18 stress for me and everything else, did she ever,
19 in those discussions, express dissatisfaction as
20 to the way things were handled back at the time;
21 in other words, the reason we are in the room, as
22 you say?

23 A Sure. I don't recall specifics other
24 than she just expressed and continues to express
25 concern and displeasure over the whole

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1 environment of a fund that was struggling
2 performance-wise and everything that came with
3 that.

4 BY MR. WASSERMAN:

5 Q You said the decision happened a month
6 ago.

7 Do you know whether -- so there was a
8 particular day, approximately a month ago, when
9 she came in and said, Ed, I want out of the
10 futures fund?

11 A Well, there was a day when we started
12 that conversation.

13 Q But you said the decision was made
14 approximately a month ago; is that accurate?

15 A I think so, yes.

16 Q And do you recall -- and you said
17 you're aware of her coming in to testify in
18 connection with this investigation, correct?

19 A Um-hum.

20 Q Do you recall whether that decision
21 that she made was before or after her testimony
22 in connection with this investigation?

23 A Afterwards.

24 Q Do you recall how long afterwards?

25 A I think fairly soon. Yeah. I mean, I

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1 think relatively soon afterwards.

2 Q Within a few days?

3 A Within a week, I'd say. Yeah.

4 Q Can you describe your relationship with
5 Ms. Rios currently?

6 A Better than ever. It's always been
7 very good. That's why I hired her. I felt like
8 there was good teamwork there. It's always been
9 good.

10 We discuss these issues very openly and
11 candidly.

12 Q Have there been any times when that
13 relationship has been strained?

14 A Not that I've felt. We had the
15 ability, I think, to disagree in a constructive
16 way.

17 So I've never felt a strained
18 relationship with her.

19 BY MR. SCHMIDT:

20 Q We looked at a portfolio management
21 agreement that you have with Catalyst that was
22 dated August 27th, 2013. That's right when it
23 converted.

24 A Right.

25 Q Has that agreement, to your knowledge,

<p style="text-align: right;">Page 321</p> <p>1 ever been modified or replaced?</p> <p>2 A No.</p> <p>3 Q Okay. That's the only one that you've</p> <p>4 ever signed from the beginning of the futures</p> <p>5 fund till today?</p> <p>6 A Yes.</p> <p>7 Q Okay. And Ms. Rios -- I think you said</p> <p>8 that you have no contract with her; is that</p> <p>9 correct?</p> <p>10 A That's correct.</p> <p>11 Q Does that mean there's nothing written</p> <p>12 when you say "contract," or what do you meeting</p> <p>13 when you say "no contract"?</p> <p>14 A We don't have a contract in terms of a</p> <p>15 document that has been signed by both of us</p> <p>16 specifying to any level of detail like this.</p> <p>17 What we do have is each year we have</p> <p>18 roughly a one-page document of responsibilities</p> <p>19 and objectives and compensation for her.</p> <p>20 Q Okay. So -- and do you guys sign this</p> <p>21 or not sign that?</p> <p>22 A We don't sign it.</p> <p>23 Q Okay. Do you give it to her during her</p> <p>24 review?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 323</p> <p>1 We did have a review back in December.</p> <p>2 So we should be up to date, yeah.</p> <p>3 Q Okay. Did you do another one after the</p> <p>4 responsibilities changed?</p> <p>5 A Not yet, no.</p> <p>6 MR. SCHMIDT: Okay. I think this is a</p> <p>7 good place to break for the day. So off the</p> <p>8 record at 5:03 p.m.</p> <p>9 (Whereupon, at 5:03 p.m., the</p> <p>10 examination was concluded.)</p> <p>11 * * * * *</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 322</p> <p>1 Q Okay. And so is it forward looking?</p> <p>2 Like "In the next year I want you to do these</p> <p>3 things and you will be paid this much"?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 A And, again, when you talk about me</p> <p>7 giving it to her, we are in modern times</p> <p>8 managementwise, so I ask her to give it to me.</p> <p>9 Q Okay. But in sort of an organizational</p> <p>10 structure, you're the person doling out the</p> <p>11 responsibilities and deciding what she pays [sic,</p> <p>12 and it comes out of your portion --</p> <p>13 A Correct.</p> <p>14 Q -- of your compensation?</p> <p>15 A Right.</p> <p>16 Q So that's I guess what I mean, even if</p> <p>17 she writes it.</p> <p>18 A Right.</p> <p>19 Q Okay. And so there's one of those</p> <p>20 every year from 2000 -- was there one at the</p> <p>21 beginning of 2014?</p> <p>22 A I think so. I'm pretty sure -- in</p> <p>23 fact, I know there was, yes.</p> <p>24 Q So '14, '15, '16, and '17 so far?</p> <p>25 A I don't know if we are up to date.</p>	<p style="text-align: right;">Page 324</p> <p>1 PROOFREADER'S CERTIFICATE</p> <p>2</p> <p>3 In The Matter of: CATALYST HEDGED FUTURES STRATEGY</p> <p>4 FUND</p> <p>5 Witness: Edward Walczak</p> <p>6 File Number: C-08400-A</p> <p>7 Date: Tuesday, April 3, 2018</p> <p>8 Location: Chicago, IL</p> <p>9</p> <p>10 This is to certify that I, Maria E.</p> <p>11 Paulsen, (the undersigned), do hereby swear and</p> <p>12 affirm that the attached proceedings before the U.S.</p> <p>13 Securities and Exchange Commission were held</p> <p>14 according to the record and that this is the</p> <p>15 original, complete, true and accurate transcript that</p> <p>16 has been compared to the reporting or recording</p> <p>17 accomplished at the hearing.</p> <p>18</p> <p>19 _____</p> <p>20 (Proofreader's Name) (Date)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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